

United States 5

Circuit Court of Appeals

For the Ninth Circuit.

WILLIAM FISHER, Supervising Inspector for the
Eleventh District of Steamboat Inspection
Service, Department of Commerce of the
United States, and DONALD AMES and
HARRY C. LORD, Local Inspectors Steam-
boat Inspection Service, Department of Com-
merce of the United States,

Appellants,

vs.

JOHN ALWEN,

Appellee.

Transcript of Record.

Upon Appeal from the United States District
Court for the Western District of Wash-
ington, Northern Division.

FILED

MAR 13 1923

F. D. MONGKTON.
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States for the Western District of Washington, Northern Division.

No. 276—(IN EQUITY).

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector for the Eleventh District, Steamboat Inspection Service, Department of Commerce of the United States, DONALD AMES and HARRY C. LORD, Local Inspectors Steamboat Inspection Service, Department of Commerce of the United States,

Defendants.

*Page-number appearing at foot of page of original certified Transcript of Record.

Complaint.

Plaintiff complaining of defendants for cause of action states and alleges:

I.

That the said defendant William Fisher was, on the 1st day of April, 1921, ever since has been, and now is a resident and citizen of the city of Seattle, State of Washington, and the duly appointed, qualified and acting Supervising Inspector for the Eleventh District, Steamboat Inspection Service, Department of Commerce of the United States with headquarters at Seattle, Washington.

II.

That the said defendants Donald Ames and Harry C. Lord were on the 1st day of April, 1921, ever since have been, and now are residents and citizens of the city of Seattle, State of Washington, and respectively United States Inspector of Hulls and United States Inspector of Boilers, Steamboat Inspection Service, Department of Commerce of the United States, together making the local Board of Steamboat Inspectors for said [2] Steamboat Inspection Service, Department of Commerce of the United States and with headquarters at Seattle, Washington.

III.

That the said plaintiff is a resident and citizen of the city of Seattle, State of Washington.

IV.

That the said plaintiff is by occupation a master mariner and has devoted his lifetime to that avo-

cation and by reason thereof has become and is specially fitted to serve as a master mariner. That by reason of having devoted all his time to this particular occupation he has been unable to educate himself or gain any experience in any other occupation; that unless he is enabled to follow and pursue his said calling as a master mariner he will be unable to support himself and those dependent upon him; that since October, 1898, he has held from the United States an unlimited ocean license as master of steam vessels and that since the 2d day of December, 1918, he has held and does now hold the license of the United States as master of steam vessels for all oceans and as pilot on Puget Sound and adjacent inland waters, Honolulu harbor, Columbia Bar from Astoria, San Francisco Bay from Benicia and San Francisco, each to sea, also San Pedro harbor to sea, said license being numbered 73609, issue No. 5, 5, and being for the period of five years from date of issue.

V.

That the value of said license to the said plaintiff is more than the sum of three thousand dollars (\$3,000.00).

VI.

That on and during the 1st day of April, 1921, the said plaintiff was the duly appointed and acting master of the United States steamboat "West Hartland"; that on said date said vessel [3] collided with the steamboat "Governor" in the vicinity of Point Wilson, Washington, in the waters of Puget Sound.

VII.

That the said defendants Donald Ames and Harry C. Lord, as said local Board of Steamboat Inspectors, immediately upon said collision taking place directed a hearing to be had before said Board as to the causes and responsibility for said collision; may witnesses were summoned by said Board and after being duly sworn, testified concerning said collision and among them was the said plaintiff. After taking all of said evidence and having duly considered the matter, the said Board on the 16th day of April, 1921, made and entered their findings and decision fully and completely exonerating the said plaintiff from all blame or responsibility for the cause of said collision, said findings and decision being in writing, a copy of which is hereto attached, marked Plaintiff's Exhibit "A" and made a part hereof.

VIII.

That neither the said plaintiff nor any party lawfully interested in or to said findings and decision appealed therefrom to the said Supervising Inspector, nor has said Supervising Inspector filed any charges with the said local Board, against the said plaintiff, and the time has long since expired within which any such appeal could have been taken.

IX.

On or about the 17th day of May, 1921, the said plaintiff received from the said William Fisher as such Supervising Inspector a letter preferring certain charges against the said plaintiff, said charges

relating to the said plaintiff's conduct as master of said "West Hartland" at and about the time of said collision, a copy of which letter is attached hereto, marked Plaintiff's [4] Exhibit "B" and made a part hereof.

X.

That the said plaintiff protested to the said defendant William Fisher, as such Supervising Inspector, against his right to make such charges or to hold such hearing in the manner and form and in the time made or at all or in anywise, and particularly reserving any and all rights which he had or might have in the premises, appeared before said Supervising Inspector, who proceeded to hold a hearing.

XI.

That on the 23d day of July, 1921, the said plaintiff received from the said defendant William Fisher, as such Supervising Inspector, certain documents purporting to be his findings relative to said collision as affecting the said plaintiff and purporting also to be the said Supervising Inspector's decision and order purporting to suspend for a period of two years from July 22, 1921, plaintiff's said license and further ordering the said plaintiff to deposit his said license in the office of the United States Local Inspectors at Seattle during the period of its suspension. A copy of said findings, said decision, and the accompanying letter of the said Supervising Inspector are hereto attached, marked plaintiff's Exhibit "C," and made a part hereof.

XII.

That the said plaintiff, protesting against the claimed right of the said defendant William Fisher, as such Supervising Inspector, to make such charges, or any charges, or to hold such hearing in the manner and form made and held, or in any manner or form in the premises, or to make such findings or order, or any findings or order at all in the premises, and without waiving any of his rights in the premises, appealed to the Supervising Inspector General of the United States Steamboat Inspection [5] Service. That on or about the 30th day of August, 1921, the said plaintiff received from F. C. Reagan, who as his attorney had prepared and presented his appeal to said Supervising Inspector General, a letter received by the said Reagan from the said Supervising Inspector General, a copy of which letter is hereto attached, marked Plaintiff's Exhibit "D," and made a part hereof.

XIII.

That the said findings and decision of the Supervising Inspector and the said decision as set forth in the letter of the said Supervising Inspector General to the said Reagan have by some unknown person been given publicity through the newspapers, although neither of said decisions or orders have been filed with said Local Board of Steamboat Inspectors.

XIV.

That said plaintiff has since the 23d of July, 1921, diligently sought to obtain employment and particularly employment as master and/or pilot

under such license, but on account of and by reason of the said wrongful, unauthorized and illegal findings, decision and order of said Supervising Inspector and the wrongful, unauthorized and illegal decision and order of said Supervising Inspector General and the publicity given thereto and thereof has been unable to secure such particular employment, or any employment at all, other than that as temporary watchman of a laid-up vessel; that until the relief requested herein is granted said plaintiff will be unable to serve as master and/or pilot of any vessel or to secure any employment bringing in sufficient remuneration to support himself and his dependents.

XV.

That the said defendant William Fisher, as said Supervising Inspector, threatens to enforce his said order suspending the said license of the said plaintiff. [6]

XVI.

That all of the proceedings, hearings and orders of the said defendant Fisher, as said Supervising Inspector, and the said Supervising Inspector General, which have been made or which may be made affecting or pretending to affect the right of the said plaintiff to serve as master under said license by reason or on account of the conduct or actions of the said plaintiff as master of said "West Hartland" immediately preceding, at and immediately after the said collision are null and void but nevertheless of such force and character as to effectually deprive the said plaintiff of an opportunity

to serve as master and/or pilot under said license, in that no one will give him any such employment and he is thereby irretrievably damaged.

XVII.

That by reason of said wrongful, unlawful and illegal proceedings, hearings, findings, decisions and orders, and each of them, of the said defendant William Fisher, as said Supervising Inspector, and the said Supervising Inspector General, and each of them, said plaintiff has been deprived of a valuable property right, to wit, the right to serve as master and/or pilot under his said license, all without due process of law.

XVIII.

That plaintiff has no plain, speedy and adequate remedy at law in the premises.

NOW, THEREFORE, said plaintiff prays:

1. That the said defendant William Fisher, as Supervising Inspector, be perpetually enjoined from filing with said local Board his said findings, decision and order, or either or any of them, or any decision or order, or any findings, decision, or order in anywise reversing, changing or modifying the said findings and decision of the said local Board as to the said plaintiff or his license, or from doing anything tending to [7] reverse, modify or change said decision and order of said local Board as to the said plaintiff or his said license.

2. That said defendant William Fisher be perpetually enjoined from doing anything toward enforcing his said decision and order.

3. That the said defendant William Fisher be perpetually enjoined from any interference with plaintiff's services or right to serve as master and/or pilot under said *said* license on account of or by reason of plaintiff's conduct just before, at, or immediately following said collision.

4. That said defendants Donald Ames and Harry C. Lord, as such local Board, be perpetually enjoined from placing on file with the records of said local Board, or from complying with, recognizing or receiving any findings, decision or order of the said defendant William Fisher as Supervising Inspector, or from the said Supervising Inspector General, or anyone else, tending to modify, change or reverse their said decision as such local Board as to the said plaintiff; and that they, as such Board, and each of them be perpetually enjoined from cancelling or suspending the said license of the said plaintiff for or on account of his actions or conduct immediately preceding, at or immediately following said collision.

5. That said pretended findings, decision and order of the said defendant William Fisher, as Supervising Inspector, and the said pretended decision and order of the said Supervising Inspector General be declared null and void.

6. That if prior to the final order of the Court herein the said defendant William Fisher, as such Supervising Inspector, or the said Supervising Inspector General shall file with said local Board any findings, decision or order in anywise reversing, changing or modifying the said decision of the

[8] said local Board, or tending in anywise to suspend or cancel the said license of the said plaintiff, or direct any interference therewith or the use thereof by said plaintiff, or service by said plaintiff thereunder on account of or by reason of the actions or conduct of the said plaintiff immediately prior to, at, and immediately following said collision, the said defendants Donald Ames and Harry C. Lord be ordered to file with the clerk of this court each and every of such findings, decisions and orders making a report in writing thereof to said Court and deliver to record counsel of plaintiff herein a copy of such report, together with a copy of such findings, decisions, or orders, and that said findings, decisions and orders and each of them be declared null and void and that the clerk of said court be directed to so stamp each of such findings, decisions and orders.

7. And for such other and general relief as may seem meet and agreeable to the Court.

JOHN ALWEN,
Plaintiff.

HOWARD G. COSGROVE,
Attorney for Plaintiff.

State of Washington,
County of King,—ss.

John Alwen, being first duly sworn, on oath deposes and says: That he has read the foregoing complaint in equity, understands and knows the contents thereof, and that the same is true.

JOHN ALWEN.

Subscribed and sworn to before me this 7th day of September, 1921.

[Notarial Seal] HOWARD G. COSGROVE,
Notary Public Residing at Seattle, Washington.

[9]

Plaintiff's Exhibit "A."

File No. 3559.

Office of Local Inspectors,
Seattle, Washington.

April 16, 1921.

IN THE MATTER OF THE INVESTIGATION
OF THE COLLISION BETWEEN THE S. S.
"GOVERNOR" AND "WEST HARTLAND"
ON APRIL 1, 1921, OFF POINT WILSON,
RESULTING IN THE SINKING AND
TOTAL LOSS OF THE S. S. "GOVERNOR."

FINDINGS.

We hold that Harry H. Marden, while in charge of the S. S. "Governor" March 31st and April 1st, 1921, under authority of a license as Master of Pacific Ocean, coastwise steamers, also Pilot on waters of Puget Sound and adjacent inland waters, Serial No. 67609, Issue No. 4, 14, issued at Seattle, Washington, October 5, 1917, violated Title 52, Section 4442, U. S. Revised Statutes, specifically—"Inattention to the duties of his station," in not leaving the pilot house, the windows of which were closed, in response to the report of the lookout and bridge quartermaster that certain lights were in close proximity, which violation resulted in the col-

lision between the S. S. "Governor" and S. S. "West Hartland." We hold that Ernest Kellenberger, Second Mate on the S. S. "Governor," holding a license as Chief Mate of steam vessels, any ocean, and who was on watch with the pilot at the time of the collision, violated Title 52, Section 4442, U. S. Revised Statutes, specifically—"Inattention to the duties of his station," in not keeping a proper lookout after relieving the Third Mate to take the 12:00 to 4:00 watch, A. M. April 1, 1921, when the steamer lights were in plain view and had been previously reported, and which inattention resulted in disaster to his vessel. He was at this time in official charge of the S. S. "Governor." We also hold that Arne Hage, Third Mate in official charge of the S. S. "Governor," before 12:00 o'clock, and who was on watch with the pilot at that time, violated Title 52, Section 4442, U. S. R. S., specifically,—“Inattention to the duties of his station” in not leaving the pilot house, the windows of which were closed, in response to the report of the lookout and bridge quartermaster that certain lights were in close proximity, which violation resulted in the collision between the S. S. "Governor" and the "West Hartland."

The "West Hartland," having discharged her pilot off Port Townsend, had set a course to pass Point Wilson that would cross obliquely the course of any vessel passing Point Wilson on a course laid within $\frac{3}{8}$ or so of a mile off Marrowstone Point. When the master of the "West Hartland," Capt. John Alwen, who had personal charge of the navigation of the vessel, at the time, first saw the

approaching lights of the "Governor" he realized that the vessels were developing a crossing situation. He watched the approaching lights anxiously but abided by the provisions of the crossing rule. Crossing Rule—Rule VII. When two steamers are meeting at right angles or obliquely, viz.: the vessel having another on her own starboard side must give way to the other, the latter to hold her own course and speed. This makes the latter vessel a "privileged" [10] vessel under the law, as the vessel having the right of way must keep her course and speed, and the other vessel may assume that she will do so. This renders it obligatory on the vessel which has the right of way to pursue her course at the speed she had been keeping up previously. She must rely on the other vessel to avoid collision, and not embarrass her by any maneuver. All she need do is do nothing. Then the other vessel knows what to expect and navigates accordingly. This rule applies to all the other steering and sailing rules. Under it, when a sail vessel is running free keeps out of the way, the closehauled vessel keeps her course. Between two crossing steamers, when the one on the left keeps out of the way, the other keeps her course. Between a steamer and a sail vessel, when the steamer keeps out of the way, the said vessel keeps her course. The principle is the same in all these different contingencies.

Sec. 155, U. S. 252, 15 Sup. Ct. 99, 39 L. Ed. 139. This rule the "West Hartland" was endeavoring to follow until the master saw that a collision was imminent when he reversed his engines to full speed

astern in an effort to lessen the force of the impact that must follow, a privilege granted him under Rule XI of the inland pilot rules, which reads as follows: "In obeying and construing these rules due regard shall be had to all *dangers of navigation and collision* and to any SPECIAL CIRCUMSTANCES which may render a departure from the above rules necessary in order to avoid immediate danger." The expression "if necessary" does not mean essential but prudent or expedient, to the mind of a mariner of skill. As Capt. John Alwen, master of the S. S. "West Hartland" acted in accordance with these principles, he is absolved from all blame.

Capt. Edward P. Bartlett, master of the S. S. "Governor" not being in charge of the navigation of that vessel up to the time of the collision between the vessels, is absolved from all blame. He had gone to his room after sighting Point Wilson ahead and assured himself that all was going well, before the vessel had reached that point. He took command immediately on hearing whistle signals between the vessels and by his intelligent supervision of the debarkation of the survivors everything worked smoothly under the trying circumstances incident to a disaster of this character.

(Sgd.) DONALD AMES,
HARRY C. LORD,
U. S. Local Inspectors.

Plaintiff's Exhibit "B."

DEPARTMENT OF COMMERCE.

Steamboat-Inspection Service.

In reply refer to
File No. 788/1.

Office of Supervising Inspector,
11th District,
Seattle, Wash.

May 18, 1921.

Captain John Alwen,
2023 Boylston Ave. North,
Seattle, Washington.

Sir:

You are hereby charged with violation of the U. S. Revised Statutes, sections 4439 and 4450, with negligence, unskillfulness and inattention to your duties as master of the steamship WEST HARTLAND on the night of March 31, 1921, and the morning of April 1, 1921, in this, that being in doubt as to the course and intention of the Steamship GOVERNOR as that vessel and the WEST HARTLAND were approaching each other, you failed to signify your lack of understanding, which resulted in the collision between the WEST HARTLAND and the GOVERNOR; and further, in this, that having signalled the GOVERNOR of your intention to hold course and speed you failed to do so but without informing the GOVERNOR thereof you stopped and reversed engines, which resulted in the collision between the WEST HARTLAND and the GOV-

ERNOR; and further, in this, that when the collision was imminent you did not take proper measures to avoid the collision which resulted in the collision between the WEST HARTLAND and the GOVERNOR.

At your earliest convenience you are directed to appear at this office to make answer to those charges. You may be represented by counsel if you so desire.

Respectfully,

(Sgd.) WILLIAM FISHER,

Supervising Inspector, Eleventh District.

W. [12]

Plaintiff's Exhibit "C."

DEPARTMENT OF COMMERCE.

Steamboat-Inspection Service.

In reply refer to

File No. 788/1.

Office of Supervising Inspector,
11th Dist.

Seattle, Wash., July 22, 1921.

Captain John Alwen,
2023 Boylston Ave. North,
Seattle, Wash.

Sir:

Herewith please find copy my findings, conclusions and decisions in the matter of your recent trial. A copy of my decision addressed to you is in the same mail.

Respectfully,

(Sgd.) WILLIAM FISHER,

Supervising Inspector, Eleventh District.

W.

DEPARTMENT OF COMMERCE.

Steamboat-Inspection Service.

In reply refer to
File No. 788/1.

Office of Supervising Inspector,
11th District,
Seattle, Wash.

July 22, 1921.

Captain John Alwen,
2023 Boylston Ave. North,
Seattle, Wash.

Sir:

I hold and it is my decision that you are guilty of negligence, unskillfulness, and inattention to your duties as Master of the S. S. WEST HARTLAND on the night of March 31, 1921, and the morning of April 1, 1921, in connection with the collision between that vessel and the S. S. GOVERNOR.

Your license as Master and Pilot, No. 73609, issue number 5, 5, dated December 2, 1918, is hereby suspended for a period of two years from this date, July 22, 1921.

You are directed to deposit your license in the office of the U. S. Local Inspectors at Seattle for custody during the period of its suspension.

Respectfully,

(Sgd.) WILLIAM FISHER,

Supervising Inspector, Eleventh District.

F/W. [13]

DEPARTMENT OF COMMERCE.

Steamboat-Inspection Service.

In reply refer to

File No. 788/1.

Office of Supervising Inspector,
11th District,
Seattle, Wash.

July 22, 1921.

IN THE MATTER OF THE TRIAL OF
CHARGES PREFERRED BY THE U. S.
SUPERVISING INSPECTOR, ELEVENTH
DISTRICT, AGAINST CAPTAIN JOHN
ALWEN, MASTER OF THE S. S. WEST
HARTLAND, IN CONNECTION WITH
THE COLLISION BETWEEN THAT VES-
SEL AND THE S. S. GOVERNOR ON THE
MORNING OF APRIL 1, 1921.

This proceeding arises out of the collision between the S. S. WEST HARTLAND and the S. S. GOVERNOR, which occurred shortly after midnight April 1, 1921, and as a result of which eight persons lost their lives, and the Governor, a passenger liner valued at \$2,250,000.00 was sunk.

The Board of Local Inspectors after an investigation rendered a decision April 16th, exonerating Captain Alwen of the West Hartland from all blame. A careful reading of the testimony taken at the investigation convinced me that the conclusion of the Local Board in this regard was not warranted by the evidence then before them. Acting in accordance with my duty as Supervising Inspector (Act of June 10, 1918) and following the instructions of the

Department as to the proper procedure, I filed charges against the Master of the West Hartland.

The proceedings against the Pilot of the Governor are before me in another case, but are not involved here. For the purpose of this decision, it may be conceded that Captain Marden was culpable in his management of the Governor; this case is solely as to the participation of Captain Alwen; Was he free from blame or was he negligent, unskillful, or inattentive to his duties in respect to the matters set forth in the charges. To reach a correct solution of this question hypothetical questions, based upon assumed positions of the ships, throw very little light.

After reviewing all the testimony given in the case, both before the Local Board and myself, and endeavoring to reconcile the frequent conflicts in the evidence, I find the facts to be as follows:

FINDINGS.

The West Hartland is a freighter of 6167 gross tons (8800 tons dead weight), 410 feet in length, equipped with 2500 horse power turbine engines. On the night in question, March 31, 1921, she left Port Townsend, after putting ashore her pilot, at 11.50 p. M. She was deeply laden (24' 8" forward 23' 5" aft) and steering sluggishly. Starting at rest at a point more than $\frac{3}{4}$ of a mile off shore, she was put on a course N. N. W., toward the open waters of Admiralty Inlet and Puget Sound; at 11.59 she had attained a speed of about 5 knots; at 12.02, 6 knots, and would not have reached her full speed of 8 $\frac{1}{2}$ knots until about 12.05.

Meanwhile, at 11.54, the Master and the third officer [14] observed the Governor approaching on a crossing course. She was brightly lighted and her identity, speed and destination were immediately known to them as is evidenced by Captain Alwen's first comment, "Hello, there's the Governor."

The latter vessel with 305 persons on board was en route from Victoria to Seattle, traveling at a speed of about 15.4 knots per hour. The approach of the West Hartland was not observed by the officers of the Governor because the red side light and range lights of the West Hartland were confused with a bright red light on the dock at Port Flagler, and a number of bright lights above and in the vicinity of the dock, the vessel and dock bearing about in line from the Governor.

A few moments after noting the appearance of the Governor, Captain Alwen remarked to the third officer, "It's about time for her to do something."

Again, shortly after midnight he said to the second officer, "What is he trying to do."

To which the latter responded, "He is probably trying to cross us."

At about this same time, the Quartermaster on watch overheard the Captain say to himself, "I wonder what that fellow is going to do."

All this time the vessels were rapidly approaching each other without any signals being exchanged. Any signal from the West Hartland during these five or six crucial minutes would have saved the situation, but no signal was given.

Not until a time which the weight of the evidence fixes at within a minute and a half of the collision did Captain Alwen sound his whistle.

The collision occurred at 12.04 or 12.04½ A. M. With the exception of the bridge log of the *West Hartland*, in which the entries were made after the accident, and are disputed by Captain Alwen, the testimony of the witnesses as to the time elapsing between the first whistle and the collision may be summarized as follows: Captain Alwen's single blast was immediately answered by three blasts from the Governor; the telegraph signal to the engine room was given between the single blast and the answer. The second officer of the *West Hartland* testified that he operated the telegraph before he heard the three whistles from the Governor and that the one whistle, operating the telegraph, and the three whistles occurred as close together as possible. The chief engineer of the *West Hartland* heard the telegraph before he heard the three whistles, and the third mate of the *West Hartland*, who was standing in the chart room three feet from the door, upon hearing one whistle followed immediately by three whistles, opened the door as quickly as he could and was just entering the door when he heard the telegraph ring. Only one signal was received in the engine room before the collision "full speed astern," and the original record made of this by the water tender fixes the receipt of this signal at one minute before the collision. Passengers on the Governor heard the single blast answer at once by three blasts

and the crash followed almost at once, within a fraction of a minute. [15]

That the vessels were very close together at 12.03 can be proven in another way. The Governor's course prior to the collision was S. 68 degrees E. and her average speed was 15.4 knots or a knot in 3.9 minutes. The West Hartland was making not less than 6 knots, a knot in 10 minutes. The vessels were approaching the convergence of their course lines at a combined speed of 2168 feet, or more than a third of a nautical mile a minute. Captain Alwen is positive that the vessels were three quarters of a mile apart at 12.01, or 4560 feet. In that situation, the vessels would reach the intersection of their course lines about 12.03. Mr. Colby puts the distance apart at 12.01 as about six lengths or 2466 feet and in that situation they would reach the point of collision before 12.03. Mr. Ahrens puts the distance apart at 12.03 as $2\frac{1}{2}$ or 3 lengths, or 1000 to 1200 feet. Mr. Lane realized that the vessels were getting close just prior to the collision but thought the Governor had plenty of time to get by. He testified he was no judge of distance and had no idea how far apart they were. Captain Marden places the distance apart at 12.03 as one quarter of a mile or 1520 feet. Mr. Kellenberger puts the distance at less than a quarter of a mile, "So close it was instinctively realized that she was going to hit, so close we all stood there holding our breath knowing she was going to hit, no possible chance to get out of it." Mr. Hage walked along the dock a distance

of about 50 feet between the one whistle and the collision.

CONCLUSIONS.

From the testimony, I cannot escape the following conclusions:

“(1) As the vessels approached each other, the Master of the *West Hartland* was in doubt as to the course and intention of the *Governor*. It is my opinion that when Captain Alwen declared, ‘it is time for the *Governor* to do something,’ it was then time for him to find out what the *Governor* was going to do and until he had that information he was in doubt as to the intention of the *Governor*. His doubt was shown very plainly by his question to the second officer, ‘What is he trying to do,’ and his doubt was expressed when he said, ‘I wonder what that fellow is going to do.’ It was especially necessary for him to know the intention of the *Governor* because the constantly accelerating speed of the *West Hartland* made it impossible for either vessel to determine whether there was risk of collision. Knowing that it was time for the *Governor* to do something and being in doubt about what that action would be, he continued on a crossing course without any indication from the *Governor*, and about seven minutes later the vessels collided sinking the *Governor* with a loss of eight lives and a property loss of over \$2,5000,000.

“Captain Alwen’s claim that bearings taken of the *Governor* indicated that she was crossing

safely is not borne out by his question to the second officer, 'What is she trying to do,' and his talking to himself in the pilot house saying, 'I wonder what that [16] fellow is going to do.' Both remarks were made after the time he claims to have taken the bearings. His first assumption may have been that she would cross in front of him; the fact remains that his first and only signal was to the effect that he would cross the Governor. Bearings taken before midnight would be of no value in determining the risk of collision later, because the speed of the West Hartland was accelerating very fast as she approached her maximum momentum. The opening of the range lights of the Governor can be accounted for by the convergence of the course lines of the two vessels.

“(2) Being in doubt as to the course and intention of the Governor, Captain Alwen failed to signify the fact by any signal until a catastrophe was imminent. The law and ordinary prudence impose on any vessel in doubt the duty of ascertaining the intentions of the other vessel. The safety of vessels and the lives on board depend upon no chances being taken by either vessel and, when the failure of one vessel is apparent, or should be apparent, or where there is doubt from any cause, this doubt should be indicated in ample time for exchange of signals to permit each vessel to safely maneuver. When Captain Alwen observed the green light of the Governor bearing on his port

bow in such a manner as to make it apparent that the Governor was crossing the bow of the West Hartland and was persisting in this course, and giving no indication of any intention to change her course, her action causing Captain Alwen to ask the second officer, 'What is she trying to do,' and to remark, 'I wonder what that fellow is going to do,' there was apparent danger of collision. The very fact that a crossing such as the Governor was about to make is a violation of the law, it seems to me should have aroused doubt in any prudent and skilful navigator and caused him to blow timely danger signals.

"(3) Having delayed giving a signal until too late, Captain Alwen blew one blast signifying that he would hold his course and speed and then immediately put his engines full speed astern. In other words, having claimed his right of way and immediately receiving a signal from the Governor that she was backing full speed, Captain Alwen, instead of keeping his signified course and speed, also backed up and thus kept the two vessels in the same relative situation. As justification for his action, Captain Alwen and his counsel cite the rule applicable '*in extremis*,' which permits disregard of rules when collision is imminent. He is, however, in this dilemma: As heretofore noted, his whistle and signal to the engine room were almost simultaneous. If the ships were then '*in extremis*' there remained no opportunity to

maneuver after the first whistle was blown and Captain Alwen stands self convicted of unwarranted delay in sounding some signal. Contrary to this is the testimony of Captain Alwen that he was backing for nearly two minutes before the collision, had taken about a knot off his speed and had time to signal the Governor of his changed intention. If this be true, then Captain Alwen went contrary to his expressed intention, failed to signify [17] a change and thereby contributed to the disaster.

“(4) The privileged ship is not free to proceed into a dangerous situation or act in disregard of the maxim ‘Safety first.’

“The decision of the Local Board puts, it seems to me, too broad an application on the well known rule that the ship having the right of way shall hold her course and speed. Even should it be conceded that a ship whose speed is constantly accelerating comes within the rule, though the nature of her maneuver is unknown to the burdened ship, yet it cannot be said that ‘All she (the privileged ship) need do is do nothing.’ Such a rule would encourage disregard of the sacred obligation to preserve human life, and would, if literally pursued, result in an attitude on the part of those inclined to recklessness which would constitute a menace to safe navigation. While this proceeding is not in any sense a law suit,—on the contrary it pertains solely to a license issued by this department—yet it is proper to note that

the highest legal authority has frequently recognized that the privileged ship, as well as the burdened, is bound to use all possible skill and prudence to avoid putting human life in danger; and when danger looms ahead the officer in charge must exert caution and skill in the discharge of his important duties.

“In this case every consideration demanded that an understanding be had as to the Governor’s intention *before the point of danger was reached*. From a background of high land with many bright lights and deep shadows, Captain Alwen was putting out with his deep laden 8800 ton turbine ship; she was down by the head 1’ 3’’; she steered sluggishly; the Governor appeared and took a course that put him in doubt; a situation of danger was developing. Would she cross in front or behind him? The mere sounding of his whistle would determine it, yet he kept on until a position was reached when the immediate answering of his one whistle put him *‘in extremis.’* The opportunity for prudence was then passed; he indicated that he would hold his course and speed; the Governor reversed to comply if possible with his signal, and then he reversed and the two ships came together.

DECISION.

“I therefore hold and it is my decision that Captain John Alwen is guilty of negligence, unskillfulness, and inattention to his duties as Master of the S. S. West Hartland on the night

of March 31, 1921, and the morning of April 1, 1921, in connection with the collision between that vessel and the S. S. Governor, and his license as master and pilot, No. 73609, issue number 5, 5, dated December 2, 1918, is hereby suspended for a period of two years from this date July 22, 1921. Captain Alwen is directed to deposit his license with the U. S. Local Inspectors at Seattle, where it will remain during the period of its suspension.

(Sgd.) WILLIAM FISHER,
Supervising Inspector, Eleventh District." [18]

Plaintiff's Exhibit "D."

Copy.

In reply refer to

AEK.

File 81438.

DEPARTMENT OF COMMERCE.

Steamboat-Inspection Service.

Washington.

August 23, 1921.

Chief Clerk.

1921 Aug 24 AM 9/31

F. C. Reagan, Esquire,

Office of United States Attorney,

Department of Justice,

Seattle, Washington.

Sir:

1. The Bureau is in receipt of your letter of the 15th instant, enclosing notice of appeal by Captain John Alwen, Master of the S. S. WEST HART-

LAND, from the decision of the Supervising Inspector of the Eleventh District, United States Steamboat Inspection Service at Seattle, Washington, in the matter of the collision between the S. S. GOVERNOR and the S. S. WEST HARTLAND on April 1, 1921, made and rendered July 22, 1921.

2. It is observed that the notice of appeal is signed by John Alwen, Master, S. S. WEST HARTLAND, and countersigned by yourself as Attorney for Captain John Alwen, Master of S. S. WEST HARTLAND.

3. Receipt is also acknowledged of the brief of Captain John Alwen, signed by you as his attorney, submitted in connection with his appeal from the decision of the Supervising Inspector of the Eleventh District, United States Steamboat Inspection Service, Seattle, Washington, made and rendered July 22, 1921.

4. In reply, you are advised that your brief has been very carefully read, thoroughly analyzed, and comprehensively digested. All the evidence adduced at the trial has been considered in all its phases and from every direction, and as to its purpose and effect.

5. In the opinion of the Bureau, your contention that the action of the Supervising Inspector was irregular and not authorized by the law, has no force, as that authority is fully covered by Sections 2 and 3 of the Act of Congress, approved June 10, 1918, and the Supervising Inspector proceeded correctly in his consideration of this case. The method

of obtaining evidence in cases of this character, its admission, application and purpose, is not governed by any rules of practice or procedure, and evidence may be secured in any manner that will best tend to elicit the information necessary or desirable in arriving at an intelligent and consistent conclusion and decision. The inuendo contained in your brief directed against the integrity and the impartiality of the Supervising Inspector deserves no consideration at my hand, and will be passed over without comment, as I believe that he has been eminently fair and impartial in his consideration of this important case, and that there has been no desire on his part to determine any other than a just and consistent conclusion.

6. The previous experience of the Supervising Inspector eminently fits him to determine responsibility for accident or casualty, and his judgment and discretion in such matters should have the most considerable attention. It is quite unnecessary to [19] undertake to answer in detail the various contentions of your brief, many of the contentions being reiterations of protest which add no strength to previous statements upon the same points, but it will suffice to say that I believe that the action of the Supervising Inspector was legal and perfectly regular, his conduct of the case was in accordance with intelligent and impartial procedure, and his conclusion and decision in accordance with the evidence adduced at the trial of Captain Alwen, and fully supported by the incidents attending the collision of the S. S.

WEST HARTLAND and the S. S. GOVERNOR
on the night of April 1, 1921.

7. The decision of the Supervising Inspector of the Eleventh District, United States Steamboat Inspection Service, Seattle, Washington, suspending the license of Captain John Alwen for two years from July 22, 1921, is affirmed and the appeal respectfully dismissed.

Respectfully,

(Signed) GEO. UHLER,

Supervising Inspector General.

MH.

Approved:

(?)

Assistant Secretary of Commerce.

Aug. 24, 1921.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sep. 7, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [20]

In the District Court of the United States, for the
Western District of Washington, Northern
Division.

No. 276—(IN EQUITY).

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector for
the Eleventh District, Steamboat Inspec-
tion Service, Department of Commerce of
the United States, DONALD AMES and
HARRY C. LORD, Local Inspectors Steam-
boat Inspection Service, Department of
Commerce of the United States,

Defendants.

Answer of Defendants.

Now come the defendants above named, and for
answer to the bill of complaint of the above-named
plaintiff, filed in the above-entitled court and
cause, admit, deny and allege as follows:

I.

The said defendants admit all of the allegations
contained in paragraph numbered I of said com-
plaint.

II.

The said defendants admit all of the allegations
contained in paragraph numbered II of said com-
plaint.

III.

The said defendants admit all of the allegations contained in paragraph numbered III of said complaint.

IV.

Answering the allegations of paragraph numbered IV of said complaint, said defendants admit that the said plaintiff is by occupation a master mariner, and has devoted his lifetime to that avocation; deny that by reason of having devoted all of his time to this particular occupation [21] he has been unable to educate himself or gain any experience in any other occupation; deny that unless he is enabled to follow and pursue his said calling as a master mariner he will be unable to support himself and those dependent upon him as alleged in the said paragraph numbered IV of said complaint, and admit that the said plaintiff has held the licenses alleged in said paragraph numbered IV of said complaint except as hereinafter alleged, and in this behalf defendants allege that on or about December 29, 1918, the license of the said plaintiff as master of steam vessels for all oceans and as pilot was suspended for a period of four months, which period of suspension was subsequently reduced to 3 months, because of negligence in not causing soundings to be taken in a locality where soundings could and should have been taken, and unskillfulness in the navigation of the steamship "Umatilla," which resulted on March 5th, 1918, in the stranding of said vessel and her ultimate loss on the coast of Japan, and

said defendants further allege that the said plaintiff does not now and has not at any time since July 22d, 1921, held any license as master of steam vessels, or as pilot, the license theretofore held by him having been on said July 22, 1921, suspended for a period of two years by the said defendant William Fisher, Supervising Inspector for the Eleventh District, Steamboat Inspection Service, Department of Commerce of the United States, as shown by Plaintiff's Exhibit "C" attached to said complaint.

V.

Said defendants allege that they have no knowledge or information sufficient to enable them to answer the allegations contained in paragraph numbered V of said complaint, and therefore deny the same. [22]

VI.

Said defendants admit all of the allegations contained in paragraph numbered VI of said complaint.

VII.

Said defendants admit all of the allegations contained in paragraph numbered VII of said complaint.

VIII.

Except as herinafter specifically alleged said defendants admit all of the allegations contained in paragraph numbered VIII of said complaint.

IX.

Except as hereinafter specifically alleged, said

defendants admit all of the allegations contained in paragraph numbered IX of said complaint.

X.

Answering the allegations of paragraph numbered X of said complaint, said defendants allege: That on May 20, 1921, a hearing was commenced before the said defendant William Fisher, Supervising Inspector for the Eleventh District, Steamboat Inspection Service, Department of Commerce of the United States, on charges preferred against the said plaintiff on May 16, 1921, for a violation of Sections 4439 and 4450, because of negligence, unskillfulness and inattention of the said plaintiff to his duties as master of the Steamship "West Hartland" on the night of March 31, 1921, and the morning of April 1, 1921, in connection with the collision of said vessel with the steamship "Governor." That pursuant to a charge and notice to appear dated May 16, 1921, a copy of which is attached to the complaint herein and marked Plaintiff's Exhibit "B," the said plaintiff, without any protest or objection whatsoever, appeared at said hearing [23] so commenced on May 20, 1921, in person and by counsel. That between said May 20, 1921, and June 21, 1921, numerous hearings were had upon said charge, at all of which the said plaintiff was present personally and by counsel, and at none of which did the said plaintiff object to or protest against the right of the said William Fisher to make such charge or to hold such hearings, and made no reservation of any rights whatsoever. That on June 21, 1921, and

during one of the hearings on said charge, the attorney for the said plaintiff moved to dismiss the charges so filed by the said William Fisher as they appeared in the record in the case, on the ground and for the reason that nowhere in the statutes of the United States or in the regulations issued by the Board of Supervising Inspectors, approved by the Secretary of Commerce, was the power or authority given to the Supervising Inspector to hear charges as such inspector had attempted to do in said proceeding. That upon said motion being overruled by the said defendant William Fisher, the plaintiff proceeded at said hearing to adduce evidence on his own behalf, without making any further or other objection to the right of the said William Fisher to hold said hearing in the manner and form the same was being had, and reserved no other claimed or alleged rights in the premises.

XI.

Said defendants admit all of the allegations contained in paragraph numbered XI of said complaint.

XII.

Answering the allegations of paragraph numbered XII of said complaint said defendants allege that upon the appeal referred to in said paragraph said plaintiff made no protest or objection further than that he in no way waived the question of jurisdiction or the right of the Supervising Inspector to prefer charges and hold a trial. [24]

XIII.

Said defendants admit all of the allegations con-

tained in paragraph numbered XIII of said complaint.

XIV.

Said defendants allege that they have no information or belief sufficient to answer the allegations of paragraph numbered XIV of said complaint, and therefore deny the same.

XV.

Said defendants admit all of the allegations contained in paragraph numbered XV of said complaint.

XVI.

Said defendants deny all of the allegations contained in paragraph numbered XVI of said complaint, except those relating to the force and character of the decisions referred to therein.

XVII.

Said defendants deny all of the allegations contained in paragraph numbered XVII of said complaint.

XVIII.

Said defendants deny all of the allegations contained in paragraph numbered XVIII of said complaint, and allege that this Honorable Court, sitting in equity, has not jurisdiction to hear or determine upon the matters and things set out and alleged in said complaint.

XIX.

Said defendants deny each and every other allegation contained in said complaint not herein specified admitted.

XX.

For further answer to the said bill of complaint said defendants allege:

(a) That the said defendant William Fisher, Supervising [25] Inspector for the Eleventh District, Steamboat Inspection Service, Department of Commerce of the United States, before the expiration of 30 days after the said defendants Donald Ames and Harry C. Lord, Local Inspectors, Steamboat Inspection Service, Department of Commerce of the United States, acting as a local board of steamboat inspectors, had made and entered their findings and decision exonerating the said plaintiff from all blame or responsibility for the cause of the collision between the steamship "West Hartland" and the steamship "Governor," as alleged in paragraph numbered VII of said complaint, upon his own motion reviewed the said decision and action of the said local board of Steamboat Inspectors, and upon such review, and prior to May 14, 1921, upon good and sufficient evidence concluded that the said plaintiff was in part to blame for said collision, and thereafter, and, to wit, on May 16, 1921, and in order to afford the said plaintiff an opportunity to be heard in the matter before the taking of final action by the said William Fisher in the matter of revoking, changing or modifying the said decision and action of the said Board of Local Inspectors, made a charge in writing against the said plaintiff, which said charge contained a notification to the said plaintiff to appear before him, the said William Fisher, to

make answer to said charge, and that on said May 16, 1921, said William Fisher caused a copy of said written charge and notice to be duly mailed at the United States Postoffice in the city of Seattle, State of Washington, addressed to the said plaintiff at his true address in the said city of Seattle. That Plaintiff's Exhibit "A" attached to the complaint herein is a true copy of said charge and notice. That pursuant to said notice the said plaintiff appeared before the said William [26] Fisher, and a hearing was had upon said charge as hereinbefore more particularly alleged. That the action of the said defendant William Fisher, in reviewing the decision and action of the said local Board of Inspectors, was done by the authority of and under and pursuant to the provisions of an act of Congress approved June 10, 1918, entitled "An Act to Provide for Appeals from Decisions of Boards of Local Inspectors of Vessels and for Other Purposes."

(b) That thereafter, and on July 22, 1921, the said defendant, William Fisher, made his written findings and conclusions and decision by which, among other things the license of the said plaintiff as master and pilot was suspended for a period of two years from July 22, 1921, and on said July 22, 1921, notified the said plaintiff of said findings, conclusions and decision. That said plaintiff's Exhibit "C" attached to said complaint is a true copy of said findings, conclusions and decision, and of said notification.

(c) That thereafter said plaintiff appealed from the said findings, conclusions and decision of the said defendant William Fisher to the Supervising Inspector General, Steamboat Inspection Service, Department of Commerce of the United States, and on August 23, 1921, the said Supervising Inspector General affirmed the findings, conclusions and decision of the said William Fisher, and dismissed the said appeal of said plaintiff. That the said action of the said Supervising Inspector General was thereafter and on August 24, 1921, duly approved by the Honorable C. H. Huston, Assistant Secretary of Commerce, duly acting for the Secretary of Commerce. That Plaintiff's Exhibit "D" attached to said complaint is a true copy of the said decision [27] of the Supervising Inspector General.

(d) That shortly prior to the passage of said Act of Congress entitled "An Act to Provide for Appeals From Decisions of Boards of Local Inspectors of Vessels and for Other Purposes," the committee on the Merchant Marine and Fisheries of the House of Representatives of the United States, to whom the bill for such act had been referred, submitted a report on said bill to said House of Representatives. That a copy of said report is hereto attached, and made a part hereof and marked Exhibit "A."

WHEREFORE the said defendants pray that said bill of complaint be dismissed with costs, and

for such other relief in the premises as to the Court may seem meet and proper.

WILLIAM FISHER.

WILLIAM FISHER,

Supervising Inspector for the Eleventh District,
Steamboat Inspection Service, Department of
Commerce of the United States,

DONALD AMES,

HARRY C. LORD,

Donald Ames and Harry C. Lord, Local Inspectors,
Steamboat Inspection Service, Department of
Commerce of the United States,

Defendants Above Named.

FREDERICK MILVERTON,

Attorney for Said Defendants. [28]

State of Washington,

County of King,—ss.

William Fisher, being first duly sworn on oath,
deposes and says:

That he is one of the defendants in the above-entitled cause; that he has read the foregoing answer of the defendants in said cause, and knows the contents thereof, and that the same is true of his own knowledge.

WILLIAM FISHER.

Subscribed and sworn to before me this 26th day
of September, 1921.

[Notarial Seal] HARRIET L. SCOTT,

Notary Public in and for the State of Washing-
ton, Residing at Seattle. [29]

Exhibit "A."**HOUSE OF REPRESENTATIVES.**

64th CONGRESS

REPORT

1st Session.

No. 495

**APPEALS FROM DECISIONS OF BOARDS OF
LOCAL INSPECTORS OF VESSELS.**

April 5, 1916.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed.

Mr. SAUNDERS, from the Committee on the Merchant Marine and Fisheries, submitted the following

REPORT.

(To accompany H. R. 13223.)

The Committee on the Merchant Marine and Fisheries, to whom was submitted the following bill:

A BILL to provide for appeals from decisions of boards of local inspectors of vessels, and for other purposes.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That whenever any person directly interested in or affected by any decision or action of any board of local inspectors of vessels shall feel aggrieved by such decision or action, he may appeal therefrom to the supervising inspector of the district; and a like appeal shall be allowed from any decision or action of a supervising inspector of the Supervising Inspector General, whose deci-

sion, when approved by the Secretary of Commerce, shall be final; Provided, however, That application for such re-examination of the case by a supervising inspector or by the Supervising Inspector General shall be made within thirty days after the decision, or action, appealed from shall have been rendered or taken; And provided further, that in all cases reviewed under the provisions of this act where the issue is the suspension or revocation of the license of a licensed officer such officer shall be allowed to be represented by counsel and to testify in his own behalf.

Sec. 2. That whenever there shall be a disagreement between the local inspectors in regard to any matter before them for decision they shall report the case to the supervising inspector of the district, who shall investigate and decide the same; and any supervising inspector may within thirty days thereafter, upon his own motion, review any decision or action of any board of local inspectors within his district; and in like manner the Supervising Inspector General may within thirty days thereafter review any decision or action of any supervising inspector or board of local inspectors and the decision of the Supervising Inspector General in such case shall, when approved by the Secretary of Commerce, be final.

Sec. 3. That any decision of action reviewed by the Supervising Inspector General, or by any supervising inspector, as provided in sections one and two of this act, may be revoked, changed, or modified by such reviewing officer, who shall have

power to administer oaths, and to summon and compel the attendance of witnesses by a similar [30] process as in the district courts of the United States; and the disbursing clerk, Department of Commerce, shall pay, on properly certified vouchers, such fees to any witness so summoned, for his actual travel and attendance, as shall be officially certified to by the officer reviewing the case, not exceeding the rate allowed for fees to witnesses for travel and attendance in the district courts of the United States.

Sec. 4. That the Secretary of Commerce shall make such regulations as may be necessary to secure a proper enforcement of the provisions of this act;

Sec. 5. That section forty-four hundred and fifty-two of the Revised Statutes, as amended by section six of the act of March third, nineteen hundred and five, is hereby repealed—
respectfully reports the same back to the House without amendment, with the recommendation that it do pass.

The reasons for the enactment of this measure may be found in certain facts ascertained in the investigation of the Eastland Disaster at Chicago in July, 1915.

It developed in the course of that investigation that the action of the local inspectors was final, under existing law, with relation to various situations vitally affecting the public interest. In connection with this investigation the Secretary of Commerce secured the aid of several prominent

men in Chicago who acted as an advisory committee. At the conclusion of the hearing these gentlemen made a number of recommendations. One of these recommendations was to the effect that in all cases where the power of decision of the local inspectors was final under existing law, an appeal shall be provided for all the parties directly concerned. The primary purpose of this bill is to afford this appeal, the course of the same being from the local inspectors to the supervising inspector and from the supervising inspector to the supervising inspector general. The provisions of this bill would allow an appeal to an officer convicted by the local inspectors of dereliction of duty, and in case of acquittal a like appeal is provided for the department.

Again, the local board of inspectors might make an entry in a certificate of inspection allowing the use of a less number of officers than the considerations of safe navigation for the vessel inspected would suggest as necessary and proper. Under these circumstances the owners of the vessel from motives of selfish personal interest might not take an appeal, but would be willing to abide by the action of the inspectors. This bill provides in such a case not only for a review on his motion by the supervising inspector of any action of the local inspectors, but affords in addition an appeal from the decisions of the local board, to any person directly interested in, or affected by its decision. The reasons for the passage of this measure are both obvious and impelling. Appended will be

found the letter of the Secretary of Commerce to the chairman of this committee, with the accompanying documents. [31]

DEPARTMENT OF COMMERCE.

Office of the Secretary.

Washington, December 21, 1915.

My Dear Judge Alexander: I shall be glad if you will attach this letter to that which I have heretofore written you respecting H. R. 4783.

The inclosed is one of the regular accident reports made to me by the Steamboat-Inspection Service. Attached to it is a copy of the letter I have sent to the service in the matter. The penalty of 30 days' suspension of license for such violation of regulations as has resulted in this case in the sinking of the steamer and the loss of two lives is absurdly inadequate. Nothing can be done about it, however, by the department. There is no appeal. I can write the letter of which copy is herein, but if the inspectors see fit they can do the same thing again. The suspension should have been for at least six months. It is wholly wrong that the Government should find its hands tied in matters of this kind, and it is subversive of the discipline which the service exists to preserve.

Yours very truly,

WILLIAM C. REDFIELD,

Secretary.

Hon. J. W. ALEXANDER,
House of Representatives,
Washington, D. C.

DEPARTMENT OF COMMERCE.

Steamboat-Inspection Service.

Washington, December 8, 1915.

THE SECRETARY OF COMMERCE:

Pursuant to instructions, you will please find below report of accident in which a vessel subject to the inspection of this service was concerned.

Names of Vessels: Towing Steamers LACKAWANA and TRITON.

Line or owner: Delaware, Lackawanna & Western Railroad Co. New York, N. Y., and the Independent Pier Co. Philadelphia, Pa. owners, respectively.

Officers in Charge of vessels: M. Brophy and Thomas O. Moon, masters, respectively.

Local district in which accident occurred: Boston.

Place of accident: Handkerchief Light Vessel.

Date of Accident: August 15, 1915.

Nature and extent of Accident: Collision, causing the towing Steamer LACKAWANNA to sink.

Cause of Accident: Violation of regulations governing tows of seagoing barges on inland waters.

Number of lives lost: Two.

Vessels were last inspected at Hoboken, N. J., and Philadelphia, Pa., respectively, on September 17, 1915, and May 18, 1915, respectively, by C. Smith and H. McPherson, assistant inspectors

of hulls, and W. G. Fenwick and C. A. Mattson, assistant inspectors of boilers.

Action taken: Case investigated and the licenses of the masters of both these vessels were suspended for a period of 30 days. [32]

REMARKS.—The barge NANTICOKE in tow of the tug TRITON collided with the tugboat LACKAWANNA, causing the latter to sink soon after. The mate and the cook of the LACKAWANNA were drowned, and the remainder of the crew of the LACKAWANNA, 14 men, were rescued in their lifeboat.

This case was investigated by the local inspectors at Boston and charges were preferred against the masters of these vessels. M. Brophy, master of the LACKAWANNA, was tried and found guilty of violation governing tows of sea-going barges on inland waters and his license was suspended for thirty days. Thomas O. Moon, master of the tug TRITON, failed to appear at his trial on the dates he was directed to do, and upon his failure to appear the board convened for trial and entered a finding of guilty by default and his license was suspended for 30 days, said suspension to begin on the date of the receipt of his license by the local inspectors.

The matter of the short period of the suspension of these men's licenses was taken up by this office with the local inspectors. The local inspectors advised that in arriving at the term of suspension they did not consider any extenuating circum-

stances, although certain conditions existed that might be considered extenuating.

GEO. UHLER.

December 21, 1915.

SUPERVISING INSPECTOR GENERAL,
STEAMBOAT-INSPECTION SERVICE:

I am sending to the chairman of the House of Representatives Committee on Merchant Marine and Fisheries accident report 71663 of December 8, respecting the loss of the towing steamer LACK-AWANNA and with it goes a copy of this letter. I am using this example to urge the enactment of H. R. 4783, which would give the department the right of appeal from such absurd decisions as that in the present case.

Here is a case which it is admitted that the captain of a towing steamer so acted that a collision ensued causing the loss of towing steamer LACK-AWANNA with two lives. The penalty is a suspension of license for 30 days. It is hard for me to conceive the condition of mind in which so trifling a penalty is imposed for so serious an offense. The regulations intended to save life and property were broken and loss of life and property both ensued. What worse offense is there that a marine captain could commit than this? It is not the absence of skill that is charged. It is not in the strictest sense an accident that is charged. It is a violation of regulations causing the death of human beings and the loss of a steamer. I should expect to see in a case of this kind an indefinite suspension of license, or cer-

tainly one for a period of not less than six months. I deeply regret that the law seems such that charges cannot be brought against the local inspectors who impose this trivial penalty for neglect of duty. [33]

I wish you to impress upon them that I regard them as having been derelict and as deserving of a severe reprimand. I trust in future cases they may show a higher sense of the value of human life and of the purpose for which they sit in judgment on violators who by such violations cause loss of life and property.

WILLIAM C. REDFIELD,
Secretary.

[Endorsed]: Filed in the United States District Court for the Western District of Washington, Northern Division. Sep. 27, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [34]

In the District Court of the United States for the
Western District of Washington, Northern Division.

No. 276-E—(IN EQUITY).

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector for the
Eleventh District, Steamboat Inspection
Service, Department of Commerce of the

United States, DONALD AMES and
HARRY C. LORD, Local Inspectors Steam-
boat Inspection Service, Department of Com-
merce of the United States,

Defendants. id

**Order Allowing Amendment of Plaintiff's Com-
plaint.**

This cause coming on regularly to be heard upon the application of plaintiff for leave to amend his complaint, the said plaintiff appearing in court by his attorney, Howard C. Cosgrove, and the defendants appearing in court by their attorney, Frederick Milverton, and no objection being voiced by said defendants or their said counsel:

It is **THEREFORE CONSIDERED** and **ORDERED** by the Court that the said plaintiff may be and he is hereby granted leave to amend his said complaint.

Done in open court this 27th day of September, 1921.

JEREMIAH NETERER,
Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sep. 27, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [35]

In the District Court of the United States for the
Western District of Washington, Northern Division.

f , No. 276-E—(IN EQUITY).

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector for the
Eleventh District, Steamboat Inspection
Service, Department of Commerce of the
United States, DONALD AMES and
HARRY C. LORD, Local Inspectors Steam-
boat Inspection Service, Department of Com-
merce of the United States,

Defendants.

Amended Complaint.

Leave of Court having been first obtained, plaintiff does hereby present this his amended complaint and for cause of action against said defendants states and alleges:

I.

That the said defendant William Fisher was, on the 1st day of April, 1921, ever since has been and now is a resident and citizen of the City of Seattle, State of Washington, and the duly appointed, qualified and acting Supervising Inspector for the Eleventh District, Steamboat Inspection Service, Department of Commerce of the United States with headquarters at Seattle, Washington.

II.

That the said defendants Donald Ames and Harry C. Lord were on the 1st day of April, 1921, ever since have been, and now are residents and citizens of the city of Seattle, State of Washington, and respectively United States Inspector of Hulls and United States Inspector of Boilers, Steamboat Inspection Service, Department of Commerce of the United States, together making the Local Board of Steamboat Inspectors for said Steamboat Inspection Service, Department of Commerce of the United States and with headquarters at Seattle, Washington. [36]

III.

That the said plaintiff is a resident and citizen of the city of Seattle, State of Washington.

IV.

That the said plaintiff is by occupation a master mariner and has devoted his lifetime to that avocation and by reason thereof has become and is specially fitted to serve as a master mariner. That by reason of having devoted all of his time to this particular occupation he has been unable to educate himself or gain any experience in any other occupation; that unless he is enabled to follow and pursue his said calling as a master mariner he will be unable to support himself and those dependent upon him; that since October, 1898, with the exception of three months, he has held from the United States an unlimited ocean license as master of steam vessels; that on the 31st day of March, 1921, he held and ever since has held and

does now hold the license of the United States as master of steam vessels for all oceans and as pilot on Puget Sound and adjacent inland waters, Honolulu Harbor, Columbia Bar from Astoria, San Francisco Bay from Benicia and San Francisco, each to sea, also San Pedro Harbor to sea, said license being numbered 73609, issue No. 5, 5, the same having been issued for the period of five years from December 2, 1918.

V.

That the value of said license to the said plaintiff is more than the sum of Three Thousand Dollars (\$3,000.00).

VI.

That on and during the 1st day of April, 1921, the said plaintiff was the duly appointed and acting master of the United States steamboat "West Hartland"; that on said date said vessel collided with the steamboat "Governor" in the vicinity of Point Wilson, Washington, in the Waters of Puget Sound. [37]

VII.

That the said defendants Donald Ames and Harry C. Lord, as said Local Board of Steamboat Inspectors, immediately upon said collision taking place directed a hearing to be had before said Board as to the causes and responsibility for said collision; many witnesses were summoned by said Board and after being duly sworn, testified concerning said collision and among them was the said plaintiff. After taking all of said evidence and having duly considered the matter, the said Board

on the 16th day of April, 1921, made and entered their findings and decision fully and completely exonerating the said plaintiff from all blame or responsibility for the cause of said collision, said findings and decision being in writing, a copy of which is hereto attached, marked Plaintiff's Exhibit "A" and made a part hereof.

VIII.

That neither the said plaintiff nor any party lawfully interested in said findings and decision appealed therefrom to the said Supervising Inspector; nor has said Supervising Inspector filed any charges with the said Local Board against the said plaintiff nor has he requested or directed the said local Board to explain or correct their said findings and decisions; and the time has long since expired within which any such appeal could have been taken.

IX.

That the said defendant William Fisher did not prior to May 17, 1921, give to the said plaintiff any notice or information that the said defendant William Fisher, as such Supervising Inspector, contemplated a review of said findings and decision of said local Board; that prior to May 17, 1921, the said plaintiff did not receive any notice or information from anyone to the effect that the said defendant William Fisher intended to [38] review said findings and decision of said local Board; that on the 17th day of May, 1921, said plaintiff received from the said William Fisher, as such Supervising Inspector, a letter a copy of which

is attached hereto, marked Plaintiff's Exhibit "B" and made a part hereof.

X.

That the said plaintiff protested to the said defendant William Fisher, as such Supervising Inspector, against his right to make such charges or to hold such hearing in the manner and form and in the time made or at all or in anywise and particularly reserving any and all rights which he might have in the premises, appeared before said Supervising Inspector, who proceeded to hold a hearing.

XI.

That on the 23d day of July, 1921, the said plaintiff received from the said defendant William Fisher, as such Supervising Inspector, certain documents purporting to be his findings relative to said collision as affecting the said plaintiff and purporting also to be the said Supervising Inspector's decision and order purporting to suspend for a period of two years from July 22, 1921, plaintiff's said license and further ordering the said plaintiff to deposit his said license in the office of the United States Local Inspectors at Seattle, during the period of its suspension. A copy of said findings, said decision, and the accompanying letter of the said Supervising Inspector are hereto attached, marked Plaintiff's Exhibit "C," and made a part hereof.

XII.

That the said plaintiff, protesting against the claimed right of the said defendant William Fisher,

as such Supervising Inspector, to make such charges, or any charges, or to hold such hearing in the manner and form made and held, or in any manner [39] or form in the premises, or to make such findings or order, or any findings or order at all in the premises, and without waiving any of his rights in the premises, appealed to the Supervising Inspector General of the United States Steamboat Inspection Service. That on or about the 30th day of August, 1921, the said plaintiff received from F. C. Reagan, who as his attorney had prepared and presented his appeal to said Supervising Inspector General, a letter received by the said Reagan from the said Supervising Inspector General, a copy of which letter is hereto attached, marked Plaintiff's Exhibit "D," and made a part hereof.

XIII.

That the said findings and decision of the Supervising Inspector and the said decision as set forth in the letter of the said Supervising Inspector General to the said Reagan have by some unknown person been *give* publicity through the newspapers, although neither of said decisions or orders have been filed with said local Board of Steamboat Inspectors.

XIV.

That said plaintiff has since the 23d day of July, 1921, diligently sought to obtain employment and particularly employment as master and/or pilot under such license, but on account of and by reason of the said wrongful, unauthorized and illegal

findings, decision and order of said Supervising Inspector and the wrongful, unauthorized and illegal decision and order of said Supervising Inspector General and the publicity given thereto and thereof has been unable to secure such particular employment, or any employment at all, other than that as temporary watchman of a laid-up vessel; that until the relief requested herein is granted said plaintiff will be unable to serve as master and /or pilot of any vessel or to secure any employment bringing in sufficient remuneration to support himself and his dependents. [40]

XV.

That the said defendant William Fisher, as said Supervising Inspector, threatens to enforce his said order suspending the said license of the said plaintiff.

XVI.

That the said defendant William Fisher, as such Supervising Inspector, never reviewed the said findings and decision of said local Board in the time and manner provided by law, nor did he ever review or consider said findings and decision of said local board except as herein stated.

XVII.

That since March 31, 1921, neither the said defendant William Fisher, as said Supervising Inspector, nor the said Supervising Inspector General ever acquired jurisdiction over the said plaintiff or his said license or his right to use and enjoy the same on account of or by reason of the conduct or actions of said plaintiff as master of said

“West Hartland” immediately preceding, at, and immediately after the said collision, or on account or by reason of said findings and decisions of said local Board, or at all.

XVIII.

That all of the proceedings, hearings and orders of the said defendant Fisher, as said Supervising Inspector, and the said Supervising Inspector, and the said Supervising Inspector General, which have been made or which may be made affecting or pretending to affect the right of the said plaintiff to serve as master under said license by reason or on account of the conduct or actions of the said plaintiff as master of said “West Hartland” immediately preceding, at, and immediately after the said collision are without authority in law and null and void, but nevertheless of such force and character as to effectually deprive the said plaintiff of an opportunity to serve as master and/or pilot under said license, in that no one will give him any such employment and he is thereby [41] irretrievably damaged.

XIX.

That by reason of said wrongful, unlawful and illegal proceedings, hearings, findings, decisions and orders, and each of them, of the said defendant William Fisher, as said Supervising Inspector, and the said Supervising Inspector General and each of them, said plaintiff has been deprived of a valuable property right, to wit, the right to serve as master and/or pilot under his said license, all without due process of law.

XX.

That plaintiff has no plain, speedy, and adequate remedy at law in the premises.

NOW, THEREFORE, said plaintiff prays:

1. That the said defendant William Fisher, as Supervising Inspector, be perpetually enjoined from filing with said local board his findings, decision and order, or either or any of them, or any decisions or order, or any findings, decision, or order in anywise reversing, changing or modifying the said findings and decision of the said local board as to the said plaintiff or his license, or from doing anything tending to reverse, modify or change said decisions and order of said local Board as to the said plaintiff or his said license.

2. That said defendant William Fisher, as such Supervising Inspector, be perpetually enjoined from doing anything toward enforcing his said decisions and order.

3. That the said defendant William Fisher, as such Supervising Inspector, be perpetually enjoined from any interference with plaintiff's services or right to serve as master and or/pilot under his said license on account of or by reason of plaintiff's conduct just before, at, or immediately following said collision. [42]

4. That said defendants Donald Ames and Harry C. Lord, as such local Board, be perpetually enjoined from placing on file with the records of said local Board, or from complying with, recognizing or receiving any findings, decision or order of the said defendant William Fisher, as Super-

vising Inspector, or from the said Supervising Inspector General, or anyone else, tending to modify, change or reverse their said decision as such local Board as to the said plaintiff; and that they, as such Board, and each of them, be perpetually enjoined from cancelling or suspending the said license of the said plaintiff for or on account of his actions or conduct immediately preceding, at, or immediately following said collision.

5. That said pretended findings, decision and order of the said defendant William Fisher, as Supervising Inspector, and the said pretended decision and order of the said Supervising Inspector General be declared null and void.

6. That if prior to the final order of the court herein the said defendant William Fisher, as such Supervising Inspector, or the said Supervising Inspector General shall file with said local Board any findings, decision or order in anywise reversing, changing or modifying the said decision of the said local Board, or tending in anywise to suspend or cancel the said license of the said plaintiff or direct any interference therewith or the use thereof by said plaintiff, or service by said plaintiff thereunder on account of or by reason of the actions or conduct of the said plaintiff immediately prior to, at, and immediately following said collision the said defendants Donald Ames and Harry C. Lord be ordered to file with the clerk of this court each and every of such findings, decisions and order making a report in writing thereof to said Court and deliver to record counsel of plaintiff herein

a copy of such [43] report, together with a copy of such findings, decisions, or orders, and that said findings, decisions and orders and each of them be declared null and void and that the clerk of said court be directed to so stamp each of such findings, decisions and orders.

7. That said injunction be directed not only to said defendants named, but also to their successors in office.

8. That he may have such other and general relief as may seem meet and agreeable to the court.

JOHN ALWEN,
Plaintiff.

HOWARD G. COSGROVE,
Attorney for Plaintiff.

State of Washington,
County of King,—ss.

John Alwen, being first duly sworn, on oath deposes and says: That he has read the foregoing complaint in equity, understands and knows the contents thereof, and that the same is true.

JOHN ALWEN.

Subscribed and sworn to before me this 28th day of September, 1921.

[Seal] HOWARD G. COSGROVE,
Notary Public Residing at Seattle, Washington.

Service of the foregoing amended complaint by, receipt of copy thereof is hereby admitted this September 28, 1921.

FREDERICK MILVERTON,
Special Assistant U. S. Atty. in Admiralty,
Attorney for Defendants. [44]

Plaintiff's Exhibit "A."

File No. 3559.

Office of Local Inspectors,
Seattle, Washington,
April 16, 1921.

IN THE MATTER OF THE INVESTIGATION
OF THE COLLISION BETWEEN THE S. S.
"GOVERNOR" AND "WEST HARTLAND"
ON APRIL 1, 1921, OFF POINT WILSON,
RESULTING IN THE SINKING AND TO-
TAL LOSS OF THE S. S. "GOVERNOR."

FINDINGS.

We hold that Harry H. Marden, while in charge of the S. S. "Governor" March 31st, and April 1st, 1921, under authority of a license as Master of Pacific Ocean, coastwise steamers, also Pilot on waters of Puget Sound and Adjacent inland waters; Serial No. 67609, Issue No. 4, 14, issued at Seattle, Washington, October 5, 1917, violated Title 52, Section 4442, U. S. Revised Statutes, specifically—"Inattention to the duties of his station" in not leaving the pilot house, the windows of which were closed, in response to the report of the lookout and bridge quartermaster that certain lights were in close proximity, which violation resulted in the collision between the S. S. "Governor" and S. S. "West Hartland." We hold that Ernest Kellenberger, Second Mate on the S. S. "Governor" holding a license as Chief Mate of steam vessels, any ocean; and who was on watch with the pilot at the time of the collision, violated Title 52, Section 4442, U. S.

Revised Statutes, specifically—"Inattention to the duties of his station," in not keeping a proper lookout after relieving the third mate to take the 12:00 to 4:00 watch A. M. April 1, 1921, when the steamer lights were in plain view and had been previously reported, and which inattention resulted in disaster to his vessel. He was at this time in official charge of the S. S. "Governor." We also hold that Arne Hage, Third Mate in official charge of the S. S. "Governor," before 12:00 o'clock, and who was on watch with the pilot at that time, violated Title 52, Section 4442, U. S. R. S., specifically,—“inattention to the duties of his station” in not leaving the pilot house, the windows of which were closed, in response to the report of the lookout and bridge quartermaster that certain lights were in close proximity, which violation resulted in the collision between the S. S. "Governor" and the "West Hartland."

The "West Hartland," having discharged her pilot off Port Townsend, had set a course to pass Point Wilson that would cross obliquely the course of any vessel passing Point Wilson on a course laid within $3/8$ or so of a mile off Marrowstone Point. When the master of the "West Hartland," Capt. John Alwen, who had personal charge of the navigation of the vessel, at the time, first saw the approaching lights of the "Governor" he realized that the vessels were developing a crossing situation. He watched the approaching lights anxiously but abided by the provisions of the crossing rule. Crossing-Rule VII. When two steamers are meet-

ing at right angles or obliquely, viz.: the vessel having another on her own starboard side must give way to the other, the latter to hold her own course and speed. This makes the latter vessel a "privileged" vessel under the law, as the vessel having the right of way must keep her course and speed, and the other vessel may assume that she will do so. This renders it obligatory on the vessel which has the right of way to pursue her course at the speed she had been [45] keeping up previously. She must rely on the other vessel to avoid collision, and not embarrass her by any maneuver. All she need do is do nothing. Then the other vessel knows what to expect and navigates accordingly. This rule applies to all the other steering and sailing rules. Under it, when a sail vessel is running free keeps out of the way, the closehauled vessel keeps her course. Between two crossing steamers, when the one on the left keeps out of the way, the other keeps her course. Between a steamer and a sail vessel when the steamer keeps out of the way, the sail vessel keeps her course. The principle is the same in all these different contingencies.

Sec. 155, U. S. 252, 15 Sup. Ct. 99, 3 L. Ed. 139. This rule the "West Hartland" was endeavoring to follow until the master saw that a collision was imminent when he reversed his engines to full speed astern in an effort to lessen the force of the impact that must follow, a privilege granted him under rule XI of the inland pilot rules, which read as follows: "In obeying and construing these rules due regard shall be had to all dangers of

navigation and collision and to any SPECIAL CIRCUMSTANCES which may render a departure from the above rules necessary in order to avoid immediate danger." The expression "if necessary" does not mean essential but prudent or expedient, to the mind of a mariner of skill. As Capt. John Alwen, master of the S. S. "West Hartland" acted in accordance with these principles, he is absolved from all blame.

Capt. Edward P. Bartlett, master of the S. S. "Governor" not being in charge of the navigation of that vessel up to the time of the collision between the vessels, is absolved from all blame. He had gone to his room after sighting Point Wilson ahead and assured himself that all was going well, before the vessel had reached that point. He took command immediately on hearing whistle signals between the vessels and by his intelligent supervision of the debarkation of the survivors everything worked smoothly under the trying circumstances incident to a disaster of this character.

(Sgd.) DONALD AMES,
HARRY C. LORD,
U. S. Local Inspectors. [46]

HCS.

Plaintiff's Exhibit "B."

DEPARTMENT OF COMMERCE.

Steamboat-Inspection Service.

In reply refer to
File No. 788/1.

Office of Supervising Inspector,
11th District,
Seattle, Wash.

May 16, 1921.

Captain John Alwen,
2023 Boylston Ave. North,
Seattle, Washington.

Sir:

You are hereby charged with violation of the U. S. Revised Statutes, sections 4439 and 4450, with negligence, unskillfulness and inattention to your duties as master of the steamship WEST HARTLAND on the night of March 31, 1921, and the morning of April 1, 1921, in this, that being in doubt as to the course and intention of the steamship GOVERNOR as that vessel and the WEST HARTLAND were approaching each other, you failed to signify your lack of understanding, which resulted in the collision between the WEST HARTLAND and the GOVERNOR; and further, in this, that having signalled the GOVERNOR of your intention to hold course and speed you failed to do so but without informing the GOVERNOR thereof you stopped and reversed engines, which resulted in the collision between the WEST HARTLAND

and the GOVERNOR; and further, in this, that when the collision was imminent you did not take proper measures to avoid the collision which resulted in the collision between the WEST HARTLAND and the GOVERNOR.

At your earliest convenience you are directed to appear at this office to make answer to these charges. You may be represented by counsel if you so desire.

Respectfully,
(Sgd.) WILLIAM FISHER,
Supervising Inspector, Eleventh District. [47]

Plaintiff's Exhibit "C."

DEPARTMENT OF COMMERCE.

Steamboat-Inspection Service.

In reply refer to
File No. 788/1.

Office of Supervising Inspector, 11th Dis.
Seattle, Wash., July 22, 1921.

Captain John Alwen,
2023 Boylston Ave. North,
Seattle, Wash.

Sir:

Herewith please find copy of my findings, conclusions and decisions in the matter of your recent trial. A copy of my decision addressed to you is in the same mail.

Respectfully,
(Sgd.) WILLIAM FISHER,
Supervising Inspector, Eleventh District

DEPARTMENT OF COMMERCE.

Steamboat-Inspection Service.

In reply refer to
File No. 788/1.

Office of Supervising Inspector.

11th District.

Seattle, Wash., July 22, 1921.

Captain John Alwen,
2023 Boylston Ave. North,
Seattle, Washington.

Sir:

I hold and it is my decision that you are guilty of negligence, unskillfulness, and inattention to your duties as Master of the S. S. "West Hartland" on the night of March 31, 1921, and the morning of April 1, 1921, in connection with the collision between that vessel and the S. S. GOVERNOR.

Your license as Master and Pilot, No. 73609, issue number 5, 5, dated December 2, 1918, is hereby suspended for a period of two years from this date, July 22, 1921.

You are directed to deposit your license in the office of the U. S. Local Inspectors at Seattle for custody during the period of its suspension.

Respectfully,

(Sgd.) WILLIAM FISHER,

Supervising Inspector, Eleventh District. [48]

F/W.

DEPARTMENT OF COMMERCE.

Steamboat-Inspection Service.

In reply refer to
File No. 788/1.

Office of Supervising Inspector,
11th District, Seattle, Wash.

July 22, 1921.

IN THE MATTER OF THE TRIAL OF
CHARGES PREFERRED BY THE U. S.
SUPERVISING INSPECTOR, ELEVENTH
DISTRICT, AGAINST CAPTAIN JOHN
ALWEN, MASTER OF THE S. S. WEST
HARTLAND, IN CONNECTION WITH
THE COLLISION BETWEEN THAT VES-
SEL AND THE S. S. GOVERNOR ON
THE MORNING OF APRIL 1, 1921.

This proceeding arises out of a collision between the S. S. West Hartland and the S. S. Governor, which occurred shortly after midnight April 1, 1921, and as a result of which eight persons lost their lives, and the Governor, a passenger liner valued at \$2,250,000.00 was sunk.

The Board of Local Inspectors after an investigation rendered a decision April 16th, exonerating Captain Alwen of the West Hartland from all blame, a careful reading of the testimony taken at the investigation convinced me that the conclusion of the local Board in this regard was not warranted by the evidence then before them. Acting in accordance with my duty as Supervising Inspector (Act of June 10, 1918) and following the instructions of the Department as to the proper

procedure, I filed charges against the Master of the West Hartland.

The proceedings against the Pilot of the Governor are before me in another case, but are not involved here. For the purpose of this decision, it may be conceded that Captain Marden was culpable in his management of the Governor; this case is solely as to the participation of Captain Alwen; Was he free from blame or was he negligent, unskillful, or inattentive to his duties in respect to the matters set forth in the charges. To reach a correct solution of this question hypothetical questions based upon assumed positions of the ships, throw very little light.

After reviewing all the testimony given in the case, both before the Local Board and myself, and endeavoring to reconcile the frequent conflicts in the evidence, I find the facts to be as follows:

FINDINGS.

The West Hartland is a freighter of 6167 gross tons (8800 tons dead weight), 410 feet in length, equipped with 2500 horse power turbine engines. On the Night in question, March 31, 1921, she left Port Townsend, after putting ashore her pilot, at 11:50 P. M. She was deeply laden (24' 8" aft) and steering sluggishly. Starting at rest at a point more than $\frac{3}{4}$ of a mile off shore, she was put on a course N. N. W., toward the open water of Admiralty Inlet and Puget Sound; at 11:59 she had attained a speed of about 5 knots; at 12:02, 6 knots, and would not have reached her full speed at $8\frac{1}{2}$ knots until about 12:05.

Meanwhile at 11:54, the Master and the third officer observed the Governor approaching on a crossing course. She was brightly lighted and her identity, speed and destination were immediately [49] known to them as is evidenced by Captain Alwen's first comment, "Hello, there's the Governor."

The latter vessel with 305 persons on board was en route from Victoria to Seattle, traveling at a speed of about 15.4 knots per hour. The approach of the West Hartland was not observed by the Officers of the Governor because the red side light and range lights of the West Hartland were confused with a bright red light on the dock at Port Flagler, and a number of bright lights above and in the vicinity of the dock, the vessel and dock bearing about in line from the Governor.

A few moments after noting the appearance of the Governor, Captain Alwen remarked to the third officer, "It's about time for her to do something."

Again shortly after midnight he said to the second officer, "What is he trying to do."

To which the latter responded, "He is probably trying to cross us."

At about this same time, the Quartermaster on watch overheard the Captain say to himself, "I wonder what that fellow is going to do."

All this time the vessels were rapidly approaching each other without any signals being exchanged. Any signal from the West Hartland during

these five or six crucial minutes would have saved the situation, but no signal was given.

Not until a time which the weight of the evidence fixes at within a minute and a half of the collision did Captain Alwen sound his whistle.

The collision occurred at 12:04 or 12:04½ A. M. With the exception of the bridge log of the *West Hartland*, in which the entries were made after the accident, and were disputed by Captain Alwen, the testimony of the witnesses as to the time elapsing between the first whistle and the collision may be summarized as follows: Captain Alwen's single blast was immediately answered by three blasts from the Governor; the telegraph signal to the engine room was given between the single blast and the answer. The second officer of the *West Hartland* testified that he operated the telegraph before he heard the three whistles from the Governor and that the one whistle, operating the telegraph, and the three whistles occurred as close together as possible. The chief engineer of the *West Hartland* heard the telegraph before he heard the three whistles, and the third mate of the *West Hartland*, who was standing in the chart room three feet from the door upon hearing one whistle followed immediately by three whistles, opened the door as quickly as he could and was just entering the door when he heard the telegraph ring. Only one signal was received in the engine room before the collision "Full speed astern," and the original record made of this by the water tender fixes the receipt of this signal at one minute be-

fore the collision. Passengers on the Governor heard the single blast answer at once by three blasts and the crash followed almost at once, within a fraction of a minute.

That the vessels were very close together at 12:03 can be proven in another way. The Governor's course prior to the collision was S.68 degrees E. and her average speed was 15.4 knots or a knot in 3:9 minutes. The West Hartland was making not less than 6 knots, a knot in 10 minutes. The vessels were approaching the convergence of their course lines at a combined speed of 2168, or more than a [50] third of a nautical mile a minute. Captain Alwen is positive that the vessels were three quarters of a mile apart at 12:01 or 4560 feet. In that situation, the vessels would reach the intersection of their course lines about 12:03. Mr. Colby puts the distance apart at 12.01 as about six lengths or 2466 feet and in that situation they would reach the point of collision before 12:03. Mr. Ahrens puts the distance apart at 12.03 as $2\frac{1}{2}$ or 3 lengths, or 1000 to 1200 feet; distance apart at 12.03 as $2\frac{1}{2}$ or 3 lengths, or 1000 to 1200 feet. Mr. Lane realized that the vessels were getting close just prior to the collision but thought the Governor had plenty of time to get by. He testified he was no judge of distance and had no idea how far apart they were. Captain Marden places the distance apart at 12.03 as one quarter of a mile or 1520 feet. Mr. Kellenberger puts the distance at less than a quarter of a mile. "So close it was instinctively realized that she was going to

hit, so close we all stood there holding our breath knowing she was going to hit, no possible chance to get out of it." Mr. Hage walked along the dock a distance of about 50 feet between the one whistle and the collision.

CONCLUSIONS.

"(1) From the testimony I cannot escape the following conclusions: As the vessels approached each other, the Master of the *West Hartland* was in doubt as to the course and intention of the *Governor*. It is my opinion that when Captain Alwen declared, 'It is time for the *Governor* to do something,' it was then time for him to find out what the *Governor* was going to do and until he had that information he was in doubt as to the intention of the *Governor*. His doubt was shown very plainly by his question to the second officer, 'What is he trying to do,' and his doubt was expressed when he said, 'I wonder what that fellow is going to do.' It was especially necessary for him to know the intention of the *Governor* because the constantly accelerating speed of the *West Hartland* made it impossible for either vessel to determine whether there was risk of collision. Knowing that it was time for the *Governor* to do something and being in doubt about what that action would be, he continued on a crossing course without any indication from the *Governor*, and about seven minutes within the vessels collided sinking the *Governor*

with a loss of eight lives and a property loss of over \$2,500,000.

Captain Alwen's claim that bearings taken of the Governor indicated that she was crossing safely is not borne out by his question to the second officer, 'What is she trying to do,' and his talking to himself in the pilot house saying, 'I wonder what that fellow is going to do.' Both remarks were made after the time he claims to have taken the bearings. His first assumption may have been that she would cross in front of him; the fact remains that his first and only signal was to the effect that he would cross the Governor. Bearings taken before midnight would be of no value in determining the risk of collision later, because the speed of the West Hartland was accelerating very fast as she approached her maximum [51] momentum. The opening of the range lights of the Governor can be accounted for by the convergence of the course lines of the two vessels.

(2) Being in doubt as to the course and intention of the Governor, Captain Alwen failed to signify the fact by any signal until a catastrophe was imminent. The law and ordinary prudence impose on any vessel in doubt the duty of ascertaining the intention of the other vessel. The safety of vessels and the lives on board depend upon no chances being taken by either vessel and, when the failure of one vessel is apparent, or should be

apparent, or where there is doubt from any cause, this doubt should be indicated in ample time for exchange of signals to permit each vessel to safely maneuver. When Captain Alwen observed the green light of the Governor bearing on his port bow in such a manner as to make it apparent that the Governor was crossing the bow of the West Hartland and was persisting in this course, and giving no indication of any intention to change her course, her action causing Captain Alwen to ask the second officer, 'What is she trying to do,' and to remark, 'I wonder what that fellow is going to do,' there was apparent danger of collision. The very fact that a crossing such as the Governor was about to make is a violation of the law, it seems to me should have aroused doubt in any prudent and skillful navigator and cause him to blow timely danger signals.

(3) Having delayed giving a signal until too late, Captain Alwen blew one blast signifying that he would hold his course and speed and then immediately put his engines full speed astern. In other words, having claimed his right of way and immediately receiving a signal from the Governor that she was backing full speed, Captain Alwen, instead of keeping his signified course and speed, also backed up and thus kept the two vessels in the same relative situation. As justification for his action, Captain Alwen and his

counsel cite the rule applicable '*in extremis*,' which permits disregard of rules when collision is imminent. He is, however, in this dilemma; As heretofore noted, his whistle and signal to the engine room were almost simultaneous. If the ships were then '*in extremis*' there remained no opportunity to maneuver after the first whistle was blown and Captain Alwen stands self convicted of unwarranted delay in sounding some signal. Contrary to this is the testimony of Captain Alwen that he was backing for nearly two minutes before the collision, had taken about a knot off his speed and had time to signal the Governor of his changed intention. If this be true, then Captain Alwen went contrary to his expressed intention, failed to signify a change and thereby contributed to the disaster.

(4) The privileged ship is not free to proceed into a dangerous situation or act in disregard of the maxim 'Safety first.'

The decision of the Local Board puts, it seems to me, too broad an application on the well-known rule that the ship having the right of way shall hold her course and speed. [52] Even should it be conceded that a ship whose speed is constantly accelerating comes within the rule, though the nature of her maneuver is unknown to the burdened ship, yet it cannot be said that 'all she (the privileged ship) need do is do nothing.' Such a rule would encourage disregard of the sacred obligation

to preserve human life, and would, if literally pursued, result in an attitude on the part of those inclined to recklessness which would constitute a menace to safe navigation. While this proceeding is not in any sense a law suit,—on the contrary it pertains solely to a license issued by this department—yet it is proper to note that the highest legal authority has frequently recognized that the privileged ship as well as the burdened, is bound to use all possible skill and prudence to avoid putting human life in danger; and when danger looms ahead the officer in charge must exert caution and skill in the discharge of his important duties.

In this case every consideration demanded that an understanding be had as to the Governor's *intention before the point of danger was reached*. From a background of high land with many bright lights and deep shadows, Captain Alwen was putting out with his deep laden 8800 ton turbine ship; she was down by the head 1' 3"; she steered sluggishly; the Governor appeared and took a course that put him in doubt; a situation of danger was developing. Would she cross in front or behind him? The mere sounding of his whistle would determine it, yet he kept on until a position was reached when the immediate answering of his own whistle put him '*in extremis*.' The opportunity for prudence was then passed; he indicated that he would hold his course

and speed; the Governor reversed to comply if possible with his signal, and then he reversed and the two ships came together.

DECISION.

I therefore hold and it is my decision that Captain John Alwen is guilty of negligence, unskillfulness, and inattention to his duties as Master of the S. S. West Hartland on the night of March 31, 1921, and the morning of April 1, 1921, in connection with the collision between that vessel and the S. S. Governor, and his license as master and pilot, No. 73609, issue number 5, 5, dated December 2, 1918, is hereby suspended for a period of two years from this date July 22, 1921. Captain Alwen is directed to deposit his license with the U. S. Local Inspectors at Seattle, where it will remain during the period of its suspension.

(Sgd.) WILLIAM FISHER,
Supervising Inspector Eleventh District." [53]

Plaintiff's Exhibit "D."

Copy

AEK.

In reply refer to
File 81438.

DEPARTMENT OF COMMERCE.

Steamboat-Inspection Service.

Washington.

August 23, 1921.

Chief Clerk.

1921 Aug 24 AM 9/41

F. C. Reagan, Esquire,
Office of United States Attorney,
Department of Justice,
Seattle, Washington.

Sir:

1. The Bureau is in receipt of your letter of the 15th instant, enclosing notice of appeal by Captain John Alwen, Master of the S. S. West Hartland, from the decision of the Supervising Inspector of the Eleventh District, United States Steamboat Inspection Service at Seattle, Washington, in the matter of the collision between the S. S. Governor and the S. S. West Hartland on April 1, 1921, made and rendered July 22, 1921.

2. It is observed that the notice of appeal is signed by John Alwen, Master S. S. West Hartland, and countersigned by yourself as Attorney for Captain John Alwen, Master of S. S. West Hartland.

3. Receipt is also acknowledged of the brief of Captain John Alwen, signed by you as his attorney,

submitted in connection with his appeal from the decision of the Supervising Inspector of the Eleventh District, United States Steamboat Inspection Service, Seattle, Washington, made and rendered July 22, 1921.

4. In reply, you are advised that your brief has been very carefully read, thoroughly analyzed, and comprehensively digested. All the evidence adduced at the trial has been considered in all its phases and from every direction, and as to its purpose and effect.

5. In the opinion of the Bureau, your contention that the action of the Supervising Inspector was irregular and not authorized by the law, has no force, as that authority is fully covered by Sections 2 and 3 of the Act of Congress, approved June 10, 1918, and the Supervising Inspector proceeded correctly in his consideration of this case. The method of obtaining evidence in cases of this character, its admission, application and purpose, is not governed by any rules of practice or procedure, and evidence may be secured in any manner that will best tend to elicit the information necessary or desirable in arriving at an intelligent and consistent conclusion and decision. The innuendo contained in your brief directed against the integrity and the impartiality of the Supervising Inspector deserves no consideration at my hand, and will be passed over without comment, as I believe that he has been eminently fair and impartial in his consideration of this important case, and that there has been no desire on his part to determine any other than a just and consistent conclusion.

6. The previous experience of the Supervising Inspector eminently fits him to determine responsibility for accident or casualty, and his judgment and discretion in such matters should have the most considerable attention. It is quite unnecessary to undertake to answer in detail the various contentions of your brief, many of the contentions being reiterations of protest [54] which add no strength to previous statements upon the same points, but it will suffice to say that I believe that the action of the Supervising Inspector was legal and perfectly regular, his conduct of the case was in accordance with intelligent and impartial procedure, and his conclusion and decision in accordance with the evidence adduced at the trial of Captain Alwen, and fully supported by the indictments attending the collision of the S. S. WEST HARTLAND and the S. S. GOVERNOR on the night of April 1, 1921.

7. The decision of the Supervising Inspector of the Eleventh District, United States Steamboat Inspection Service, Seattle, Washington, suspending the license of Captain John Alwen for two years from July 22, 1921, is affirmed and the appeal respectfully dismissed.

Respectfully,

(Signed) GEO. UHLER,
Supervising Inspector General.
MH.

Approved:

(?)

Assistant Secretary of Commerce.

Aug. 24, 1921.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sep. 28, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [55]

In the District Court of the United States for the
Western District of Washington, Northern Division.

No. 276-E—(IN EQUITY).

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector for
the Eleventh District, Steamboat Inspection
Service, Department of Commerce of the
United States, DONALD AMES and
HARRY C. LORD, Local Inspectors Steam-
boat Inspection Service, Department of Com-
merce of the United States,

Defendants.

**Stipulation Allowing Defendants Time to Answer
Amended Complaint.**

Come now the above-named plaintiff by his attorney, Howard G. Cosgrove, and the above-named defendants by their attorney, Frederick Milverton, and stipulate and agree that the said defendants may have twenty-five (25) days from the date hereof within which to answer plaintiff's amended complaint.

Dated this 28th day of September, 1921.

HOWARD G. COSGROVE,
Attorney for Plaintiff.
FREDERICK MILVERTON,
Attorney for Defendants.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 17, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [56]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 276-E—(IN EQUITY).

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector for the Eleventh District, Steamboat Inspection Service, Department of Commerce of the United States, DONALD AMES and HARRY C. LORD, Local Inspectors Steamboat Inspection Service, Department of Commerce of the United States,

Defendants.

Answer of Defendants to Amended Complaint.

Now come the defendants above named, and for answer to the amended bill of complaint of the

above-named plaintiff filed in the above-entitled court and cause, admit, deny and allege as follows:

I.

The said defendants admit all of the allegations contained in paragraph numbered I of said amended complaint.

II.

The said defendants admit all of the allegations contained in paragraph numbered II of said amended complaint.

III.

The said defendants admit all of the allegations contained in paragraph numbered III of said amended complaint.

IV.

Answering the allegations of paragraph numbered IV of said amended complaint, said defendants admit that the said plaintiff is by occupation a master mariner, and has devoted his lifetime to that avocation; deny that by reason of having devoted all of his time to this particular occupation he has been unable to [57] educate himself or gain any experience in any other occupation; deny that unless he is enabled to follow and pursue his said calling as a master mariner he will be unable to support himself and those dependent upon him as alleged in the said paragraph numbered IV of said amended complaint, and admit that the said plaintiff has held the licenses alleged in said paragraph numbered IV of said amended complaint except as hereinafter alleged, and in this behalf defendants allege that on or about December 20, 1918, the

license of the said plaintiff as master of steam vessels for all oceans and as pilot was suspended for a period of 4 months, which period of suspension was subsequently reduced to 3 months, because of negligence in not causing soundings to be taken in a locality where soundings could and should have been taken, and unskillfulness in the navigation of the steamship "Umatilla" which resulted on March 5th, 1918, in the stranding of said vessel and her ultimate loss on the coast of Japan, and said defendants further allege that the said plaintiff does not now and has not at any time since July 22d, 1921, held any license as master of steam vessels, or as pilot, the license theretofore held by him having been on said July 22, 1921, suspended for a period of two years by the said defendant William Fisher, Supervising Inspector for the Eleventh District, Steamboat Inspection Service, Department of Commerce of the United States, as shown by Plaintiff's Exhibit "C" attached to said amended complaint.

V.

Said defendants allege that they have no knowledge or information sufficient to enable them to answer the allegations contained in paragraph numbered V of said amended complaint, and therefore deny the same. [58]

VI.

Said defendants admit all of the allegations contained in paragraph numbered VI of said amended complaint.

VII.

Said defendants admit all of the allegations con-

tained in paragraph numbered VII of said amended complaint.

VIII.

Except as hereinafter specifically alleged said defendants admit all of the allegations contained in paragraph numbered VIII of said amended complaint.

IX.

Said defendants allege that they have no information or belief sufficient to answer the allegation contained in paragraph numbered IX of said amended complaint that prior to May 17, 1921, said plaintiff did not receive any notice or information from anyone to the effect that the said defendant William Fisher intended to review the findings and decision of the local board, or to answer the allegation contained in said paragraph as to when the said plaintiff received the letter marked Plaintiff's Exhibit "B" attached to said amended complaint, and therefore deny said allegations, and except as hereinafter specifically alleged, said defendants admit all of the other allegations contained in paragraph numbered IX of said amended complaint.

X.

Answering the allegations of paragraph numbered X of said amended complaint, said defendants allege; That on May 20, 1921, a hearing was commenced before the said defendant William Fisher, Supervising Inspector for the Eleventh District, Steamboat Inspection Service, Department of Commerce of the United States, on charges preferred against the said plaintiff on May 16, 1921, for a

violation of Sections 4439 and 4450, of the Revised Statutes of the United [59] States, because of negligence, unskillfulness and inattention of the said plaintiff to his duties as master of the steamship "West Hartland" on the night of March 31, 1921, and the morning of April 1, 1921, in connection with the collision of said vessel with the steamship "Governor." That pursuant to charges and notice to appear dated May 16, 1921, a copy of which is attached to the amended complaint herein and marked Plaintiff's Exhibit "B," the said plaintiff, without any protest or objection whatsoever, appeared at said hearing so commenced on May 20, 1921, in person and by counsel. That between said May 20, 1921, and June 21, 1921, numerous hearings were had upon said charges, at all of which the said plaintiff was present personally and by counsel, and at none of which did the said plaintiff object to or protest against the right of the said William Fisher to make such charges or to hold such hearings, or make any reservation of any rights whatsoever. That on June 21, 1921, and during one of the hearings on said charges the attorney for the said plaintiff moved to dismiss the charges so filed by the said William Fisher as they appeared in the record in the case, on the ground and for the reason that nowhere in the statutes of the United States or in the regulations issued by the Board of Supervising Inspectors, approved by the Secretary of Commerce, was the power or authority given to the Supervising Inspector to hear charges as such inspector had attempted to do in said proceeding.

That upon said motion being overruled by the said defendant William Fisher, the plaintiff proceeded at said hearing to adduce evidence on his own behalf, without making any further or other objection to the right of the said William Fisher to hold said hearing in the manner and form the same was being had, and reserved no other claimed or alleged rights in the premises. [60]

XI.

Said defendants admit all of the allegations contained in paragraph numbered XI of said amended complaint.

XII.

Answering the allegations of paragraphs numbered XII of said amended complaint said defendants allege that upon the appeal referred to in said paragraph said plaintiff made no protest or objection further than that he in no way waived the question of jurisdiction or the right of the Supervising Inspector to prefer charges and hold a trial, and defendants allege that Plaintiff's Exhibit "D" and not Plaintiff's Exhibit "B" attached to said amended complaint is a copy of the letter of the Inspector General referred to in said paragraph.

XIII.

Said defendants admit all of the allegations contained in paragraph numbered XIII of said amended complaint.

XIV.

Said defendants allege that they have no information or belief sufficient to answer the allegations of paragraph numbered XIV of said amended com-

plaint, and therefore deny the same, except that the defendants admit that plaintiff will be unable to serve as master and, or pilot while his license therefor is under suspension as alleged in paragraph numbered XII (b) hereof.

XV.

Said defendants admit all of the allegations contained in paragraph numbered XV of said amended complaint.

XVI.

Said defendants deny all of the allegations contained in paragraph numbered XVI of said amended complaint.

XVII.

Said defendants deny all of the allegations [61] contained in paragraph numbered XVII of said amended complaint.

XVIII.

Said defendants deny all of the allegations contained in paragraph numbered XVIII of said amended complaint, except those relating to the force and character of the decisions referred to therein.

XIX.

Said defendants deny all of the allegations contained in paragraph numbered XIX of said amended complaint.

XX.

Said defendants deny all of the allegations contained in paragraph numbered XX of said amended complaint, and allege that this Honorable Court, sitting in equity, has not jurisdiction to hear or

determine upon the matters and things set out and alleged in said amended complaint.

XXI.

Said defendants deny each and every other allegation contained in said complaint not herein specified admitted.

XXII.

For further answer to the said amended bill of complaint said defendants allege;

(a) That the said defendant William Fisher, Supervising Inspector for the Eleventh District, Steamboat Inspection Service, Department of Commerce of the United States, before the expiration of 30 days after the said defendants Donald Ames and Harry C. Lord, Local Inspectors, Steamboat Inspection Service, Department of Commerce of the United States, acting as a local board of steamboat inspectors, had made and entered their findings and decision exonerating the said plaintiff from all blame or responsibility for the cause of the collision between the steamship "West Hartland" and the steamship [62] "Governor" as alleged in paragraph numbered VII of said amended complaint, upon his own motion reviewed the said decision and action of the said local board of Steamboat Inspectors, and upon such review, and prior to May 14, 1921, upon good and sufficient evidence concluded that the said plaintiff was in part to blame for said collision, and thereafter, and, to wit, on May 16, 1921, and in order to afford the said plaintiff an opportunity to be heard in the matter before the taking of final action by the said William Fisher in

the matter of revoking, changing or modifying the said decision and action of the said Board of Local Inspectors, made charges in writing against the said plaintiff, which said charges contained a notification to the said plaintiff to appear before him, the said William Fisher, to make answer to said charges, and that on said May 16, 1921, said William Fisher caused a copy of said written charges and notice to be duly mailed at the United States Postoffice in the City of Seattle, State of Washington, addressed to the said plaintiff at his true address in the said city of Seattle. That Plaintiff's Exhibit "B" attached to the amended complaint herein is a true copy of said charges and notice. That pursuant to said notice the said plaintiff appeared before the said William Fisher, and a hearing was had upon said charges as hereinbefore more particularly alleged. That the action of the said defendant William Fisher, in reviewing the decision and action of the said local Board of Inspectors, was done by the authority of and under and pursuant to the provisions of an Act of Congress approved June 10, 1918, entitled "An act to provide for appeals from decisions of boards of local inspectors of vessels and for other purposes."

(b) That thereafter, and on July 22, 1921, the said defendant, William Fisher, made his written findings and conclusions [63] and decisions by which among other things the license of the said plaintiff as master and pilot was suspended for a period of two years from July 22, 1921, and on said July 22, 1921, notified the said plaintiff of said find-

ings, conclusions and decision. That said Plaintiff's Exhibit "C" attached to said amended complaint is a true copy of said findings, conclusions and decision, and of said notification.

(c) That thereafter said plaintiff appealed from the said defendant William Fisher to the Supervising Inspector General, Steamboat Inspection Service, Department of Commerce of the United States and on August 23, 1921, the said Supervising Inspector General affirmed the findings, conclusions and decisions of the said William Fisher, and dismissed the said appeal of said plaintiff. That the said action of the said Supervising Inspector General was thereafter and on August 24, 1921, duly approved by the Honorable C. H. Huston, Assistant Secretary of Commerce, duly acting for the Secretary of Commerce. That Plaintiff's Exhibit "D" attached to said amended complaint is a true copy of the said decision of the said Supervising Inspector General.

(d) That shortly prior to the passage of said act of congress entitled "An Act to Provide for appeals from decisions of boards of local inspectors of vessels and for other purposes," the committee on the Merchant Marine and Fisheries of the House of Representatives of the United States, to whom the bill for such Act had been referred, submitted a report on said bill to said House of Representatives. That a copy of said report is hereto attached, marked Exhibit "A" and made a part hereof.

WHEREFORE the said defendants pray that said amended bill of complaint be dismissed with costs, and for such other and further relief in the

premises as to the Court may seem meet and proper.
[64]

WILLIAM FISHER,
Supervising Inspector for the Eleventh District,
Steamboat Inspection Service, Department of
Commerce of the United States,

DONALD S. AMES,
HARRY C. LORD,
Local Inspectors, Steamboat Inspection Service,
Department of Commerce of the United States,
Defendants Above Named.

FREDERICK MILVERTON,
Special Assistant United States Attorney in Ad-
miralty,
Attorney for Said Defendants. [65]

State of Washington,
County of King,—ss.

William Fisher, being first duly sworn on oath,
deposes and says:

That he is one of the defendants in the above-en-
titled cause; that he has read the foregoing answer
of the defendant in said cause, and knows the con-
tents thereof, and that the same is true of his own
knowledge.

WILLIAM FISHER.

Subscribed and sworn to before me this 17th day
of October, 1921.

[Seal] HARRIET L. SCOTT,
Notary Public in and for the State of Washington,
Residing at Seattle. [66]

Exhibit "A."**HOUSE OF REPRESENTATIVES.**

64th CONGRESS,

1st Session.

REPORT

No. 495.

**APPEALS FROM DECISIONS OF BOARD OF
LOCAL INSPECTORS OF VESSELS.**

April 5, 1916.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. SAUNDERS, from the Committee on the Merchant Marine and Fisheries, submitted the following:

REPORT.

(To Accompany H. R. 13223).

The Committee on the Merchant Marine and Fisheries, to whom was submitted the following bill:

A BILL to provide for appeals from decisions of boards of local inspectors of vessels, and for other purposes.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, THAT whenever any person directly interested in or affected by any decision or action of any board of local inspectors of vessels shall feel aggrieved by such decision or action, he may appeal therefrom to the supervising inspector of the district; and a like appeal shall be allowed from any de-

cision or action of a supervising inspector of the Supervising Inspector General, whose decision, when approved by the Secretary of Commerce, shall be final; Provided, however, That application for such re-examination of the case by the supervising inspector or by the Supervising Inspector General shall be made within thirty days after the decision, or action, appealed from shall have been rendered or taken: And provided further, That in all cases reviewed under the provisions of this act where the issue is the suspension or revocation of the license of a licensed officer such officer shall be allowed to be represented by counsel and to testify in his own behalf.

Sec. 2. That whenever there shall be a disagreement between the local inspectors in regard to any matter before them for decision they shall report the case to the supervising inspector of the district, who shall investigate and decide the same; and any supervising inspector may within thirty days thereafter, upon his own motion, review any decision or action of any board of local inspectors within his district; and in like manner the Supervising Inspector General may within thirty days thereafter review any decision or action of any supervising inspector or board of local inspectors, and the decision of the Supervising Inspector General in such case shall, when approved by the Secretary of Commerce, be final. [67]

Sec. 3. That any decision or action reviewed by the Supervising Inspector General, or by any supervising inspector as provided in sections one and

two of this act, may be revoked, changed, or modified by such reviewing officer, who shall have power to administer oaths, and to summon and compel the attendance of witnesses by a similar process as in the district courts of the United States; and the disbursing clerk, Department of Commerce, shall pay, on properly certified vouchers, such fees to any witnesses so summoned, for his actual travel and attendance, as shall be officially certified to by the officer reviewing the case, not exceeding the rate allowed for fees to witnesses for travel and attendance in the district courts of the United States.

Sec. 4. That the Secretary of Commerce shall make such regulations as may be necessary to secure a proper enforcement of the provisions of this act.

Sec. 5. That section forty-four and fifty-two of the Revised Statutes, as amended by section six of the act of March third, nineteen hundred and five, is hereby repealed—

respectfully reports the same back to the house without amendment, with the recommendation that it do pass.

The reasons for the enactment of this measure may be found in certain facts ascertained in the investigation of the EASTLAND disaster at Chicago in July 1915.

It developed in the course of that investigation that the action of the local inspectors was final under existing law, with relation to various situations vitally affecting the public interests. In con-

nection with this investigation the Secretary of Commerce secured the aid of several prominent men in Chicago who acted as an advisory committee. At the conclusion of the hearing these gentlemen made a number of recommendations. One of these recommendations was to the effect that in all cases where the power of decision of the local inspectors was final under existing law, an appeal shall be provided for all the parties directly concerned. The primary purpose of this bill is to afford this appeal, the course of the same being from the local inspectors to the supervising inspector and from the supervising inspector to the supervising inspector general. The provisions of this bill would allow an appeal to an officer convicted by the local inspectors of dereliction of duty, and in case of acquittal a like appeal is provided for the department.

Again, the local board of inspectors might make an entry in a certificate of inspection allowing the use of a less number of officers than the considerations of safe navigation for the vessel inspected would suggest as necessary and proper. Under these circumstances the owners of the vessel from motives of selfish personal interest might not take an appeal but would be willing to abide by the action of the inspectors. This bill provides in such a case not only for a review on his motion by the supervising inspector of any action of the local inspectors, but affords in addition an appeal from the decision of the local board, to any person directly interested in, or affected by its decision.

The reason for the passage of this measure, are both obvious and impelling. Appended will be found the letters of the Secretary of Commerce to the chairman of this committee, with the accompanying documents. [68]

DEPARTMENT OF COMMERCE.

Office of the Secretary,

Washington,

December 21, 1915.

My Dear Judge Alexander: I shall be glad if you will attach this letter to that which I have heretofore written you respecting H. R. 4783.

The inclosed is one of the regular accident reports made to me by the Steamboat-Inspection Service. Attached to it is a copy of the letter I have sent to the service in the matter. The penalty of 30 days' suspension of license for such violation of regulations as has resulted in this case in the sinking of the steamer and the loss of two lives is absurdly inadequate. Nothing can be done about it, however, by the department. There is no appeal. I can write the letter of which copy is herein, but if the inspectors see fit they can do the same thing again. The suspension should have been for at least six months. It is wholly wrong that the Government should find its hands tied in matters of this kind, and it is subversive of the discipline, which the service exists to preserve.

Yours very truly,

WILLIAM C. REDFIELD,

Secretary.

HON. J. W. ALEXANDER,
House of Representatives,
Washington, D. C.

DEPARTMENT OF COMMERCE.

Steamboat-Inspection Service.

Washington,

December 8, 1915.

THE SECRETARY OF COMMERCE:

Pursuant to instruction, you will please find below report of accident in which a vessel subject to the inspection of this service was concerned.

Names of Vessels: Towing Steamers Lackawana and Triton.

Line of Owner: Delaware, Lackawanna & Western Railroad Co., New York, N. Y., and the Independent Pier Co., Philadelphia, Pa., owners, respectively.

Officers in charge of vessel: M. Brophy and Thomas O. Moon, Masters, respectively.

Local district in which accident occurred; Boston.

Place of accident: Handkerchief Light Vessel.

Date of Accident: August 15, 1915.

Nature and extent of Accident: Collision, causing the towing Steamer LACKAWANNA to sink.

Cause of accident: Violation of regulations governing tows of seagoing barges on inland waters.

Number of lives lost: two.

Vessels were last inspected at Hoboken, N. J. and Philadelphia, Pa., respectively, on September 17, 1915, and May 18, 1915, respectively, by

C. Smith and H. McPherson, assistant inspectors of hulls, and W. G. Fenwick and C. A. Mattson, assistant inspectors of boilers.

Action taken: Case investigated and the licenses of [69] the masters of both these vessels were suspended for a period of 30 days.

REMARKS.—The barge NANTICOKE in tow of the tug TRITON collided with the tugboat LACKAWANNA, causing the latter to sink soon after. The mate and the cook of the Lackawanna were drowned, and the remainder of the crew of the LACKAWANNA, 14 men, were rescued in their lifeboat.

This case was investigated by the local inspectors at Boston and charges were preferred against the masters of these vessels. Mr. Brophy, master of the Lackawanna, was tried and found guilty of violation governing tows of seagoing barges on inland waters and his license was suspended for thirty days. Thomas O. Moon, master of the tug TRITON, failed to appear at his trial on the dates he was directed to do, and upon his failure, to appear the board convened for trial and entered a finding of guilty by default and his license was suspended for 30 days, said suspension to begin on the date of the receipt of his license by the local inspectors.

The matter of the short period of the suspension of these men's licenses was taken up by this office with the local inspectors. The local inspectors advised that in arriving at the term of suspension they did not consider any extenuating

circumstances, although certain conditions existed that might be considered extenuating.

GEO. UHLER.

December 21, 1915.

SUPERVISING INSPECTOR GENERAL,
STEAMBOAT-INSPECTION SERVICE:

I am sending to the chairman of the House of Representatives Committee on Merchant Marine and Fisheries accident report 71663 of December 8, respecting the loss of the towing steamer LACKAWANNA, and with it goes a copy of this letter. I am using this example to urge the enactment of H. R. 4783, which would give the department the right of appeal from such absurd decisions as that in the present case.

Here is a case in which it is admitted that the captain of a towing steamer so acted that a collision ensued causing the loss of towing steamer LACKAWANNA with two lives. The penalty is a suspension of license for 30 days. It is hard for me to conceive the condition of mind in which so trifling a penalty is imposed for so serious an offense. The regulations intended to save life and property were broken and loss of life and property both ensued. What worse offense is there that a marine captain could commit than this? It is not the absence of skill that is charged. It is not in the strictest sense an accident that is charged. It is a violation of regulations causing the death of human beings and the loss of a steamer. I should expect to see in a case of this kind an indefinite

suspension of license, or certainly one for a period of not less than six months. I deeply regret that the law seems such that charges cannot be brought against the local inspectors who impose this trivial penalty for neglect of duty. [70]

I wish you to impress upon them that I regard them as having been derelict and as deserving of a severe reprimand. I trust in future cases they may show a higher sense of the value of human life and of the purpose for which they sit in judgment on violators who by such violations cause loss of life and property.

WILLIAM C. REDFIELD,

Secretary.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 24, 1921. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [71]

In the United States Court for the Western District
of Washington, Northern Division.

IN EQUITY—No. 276—E.

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector for
the Eleventh District, Steamboat Inspection
Service, Department of Commerce of the

U. S., DONALD AMES, and HARRY C. LORD, Local Inspectors, Steamboat Inspection Service, Department of Commerce of U. S.,

Defendants.

Decision.

Filed Jan. —, 1922.

FREDERICK MILVERTON, Special Asst.

U. S. Attorney, Attorney for Defendants.

HOWARD G. COSGROVE, Attorney for Plaintiff.

NETERER, District Judge.

Shortly after midnight, April 1, 1921, the S. S. "West Hartland" and the S. S. "Governor" collided as a result of which the "Governor" immediately sank. The plaintiff was acting Master of the "West Hartland." After the collision the Board of Local Inspectors investigating the collision found that Harry H. Marden, in charge of the S. S. "Governor," culpable, and exonerated the plaintiff, Master in charge of the S. S. "West Hartland," and filed written findings and decision of the 16th of April, 1921. The proceeding is entitled:

"IN THE MATTER OF THE INVESTIGATION
OF THE COLLISION BETWEEN THE S. S.
"GOVERNOR" AND "WEST HARTLAND"
APRIL 1, 1921, OFF POINT WILSON, RE-
SULTING IN THE SINKING AND LOSS
OF S. S. "GOVERNOR."

On the 16th of May following, the defendant Supervising Inspector sent the following letter to the Master of the "West Hartland":

“You are hereby charged with violation of the U. S. R. S. Statutes, Secs. 4439 and 4450, with negligence, unskillfulness and inattention to your duty as Master of the S. S. WEST HARTLAND on the night of March 31, 1921, and the morning of April 1, 1921, in this, that being in doubt as to the [72] course and intention of the S. S. GOVERNOR, as that vessel and the WEST HARTLAND were approaching each other, your failure to signify your lack of understanding, which resulted in the collision of the WEST HARTLAND and GOVERNOR; and further, in this, that, having signaled the GOVERNOR to hold course and speed, failed to do so, but without informing the GOVERNOR thereof, you stopped and reversed engines, which resulted in the collision of the WEST HARTLAND and GOVERNOR; and further, in this, that when the collision was imminent you did not take proper measures to avoid collision between the WEST HARTLAND and GOVERNOR.

“At your earliest convenience you are directed to appear at this office to make answer to these charges. You may be represented by counsel if you so desire.”

Thereafter, on July 22d, the Supervising Inspector rendered the following findings, conclusions and decision under the style:

“IN THE MATTER OF THE TRIAL OF CHARGES PREFERRED BY THE U. S. SUPERVISING INSPECTOR, ELEVENTH DISTRICT, AGAINST CAPTAIN JOHN ALWEN, MASTER OF THE S. S. WEST HARTLAND, IN CONNECTION WITH THE COLLISION BETWEEN THAT VESSEL AND THE S. S. GOVERNOR ON THE MORNING OF APRIL 1, 1921.

* * * * *

“DECISION.

“I, therefore, hold and it is my decision that Captain John Alwen is guilty of negligence, unskillfulness, and inattention to his duties as Master of the S. S. West Hartland * * * in connection with the collision between that vessel and the S. S. Governor, and his license as Master and Pilot, No. 73609, issue No. 5, 5, dated December 2, 1918, is hereby suspended for a period of two years, from this date July 22d, 1921. Captain Alwen is directed to deposit his license with the U. S. Local Inspectors at Seattle, where it will remain during the period of its suspension.”

The plaintiff contends that the Supervising Inspector acted without jurisdiction and that his decision is void; that he has no speedy and adequate remedy at law. The defendant Inspector claims that he had jurisdiction, and acted in accordance with law; that plaintiff appeared, presented testimony, and may not now complain. The plaintiff admits appearing, but contends that he protested the juris-

diction and objected to the proceedings. If the Supervising Inspector was without jurisdiction and his action without warrant of law the appearance of the plaintiff did not confer jurisdiction. The Supervising Inspector may do that which the law authorizes him to do through the procedure which is provided. It is conceded that under the law prior to June 10, 1918, 40 Stat. 606, there was no warrant of law which gave the Supervising Inspector the right to proceed as he did in this case. It is [73] contended that under the act *supra*, the Supervising Inspector may within 30 days after any decision of the Local Board of Inspectors, review such decision upon his own motion, and that after such review he may *revoke, change, or modify* such decision. The act *supra* is entitled:

“An act to provide for appeals from decisions of Boards of Local Inspectors of vessels and for other purposes.”

The particular object of the act in this case is to provide for *appeals*, and

“That whenever any person * * * feels aggrieved * * * he may appeal * * * to the Supervising Inspector * * * provided, however, that application for such re-examination of the case by the Supervising Inspector * * * shall be made within 30 days after the decision * * * appealed from, and shall have been rendered.”

The words “*such re-examination*” refers to the word *appeal* in the preceding portion of the section, hence “*appeal*” and “*such re-examination*” must be

held as synonymous terms. The rules and regulations provided pursuant to law, Sec. 4405, R. S., and which rules have the force of law, Fridenberg vs. Whitney et al., 240 Fed. 819, 824. Under title II, Appeal to Supervising Inspector, Sec. 1, provides:

“The inspector, upon notice of appeal from the decision of the Local Board, provided said notice of appeal shall be made within 30 days of the decision of the Local Board, shall give notice in writing to said Board to forward certified copy of their decisions together with the charges and all evidence in writing on file in their office.”

The prerequisites, therefore, necessary to effect an appeal, are plainly set forth in the Rules and Regulations, which have the force of law.

Prior to the act *supra* there was not provision for appeal except by an interested party, 240 Fed. 817, and the following was provided in Sec. 2.

* * * “Any Supervising Inspector may, within 30 days, thereafter, upon his own motion review any decision or action * * * within his district.”

and Sec. 3 provides that; if the Supervising Inspector, upon his own motion, decides his review, the same provisions apply. The same procedure applies in effecting appeal by the Supervising [74] Inspector as to an appeal by an interested party, and the same notice must be given to the Local Board. In other words, the case must be removed from the Board of Local Inspectors. Upon removal of the case the Supervising Inspector must

then proceed under the same rules prescribed for the hearing before the Local Board (Rule 2). The procedure provided is definite and explicit.

Appeal has a definite, clear and well understood meaning in all legal procedure, and its function is to revise and correct the proceedings already instituted and does not create that cause, *Wilson vs. Mason*, 1 Cranch, 44 (U. S.), 2 Law Ed., 60. An appeal is the removal of a cause from a court of inferior to one of superior jurisdiction for review. *Greenwood County vs. Town of New Hartford*, 32 Atl. 933 (Conn.). Appeal is a process of civil origin and removal of the cause entire for review and re-trial, *Lyle vs. Barnes*, 40 Miss. 608. The legal significance of appeal means appellate process which opens the former judgment and sends the case to a higher court for a trial *de novo* upon the same facts or new facts regardless of the former trial, *Richardson vs. Henderson*, 37 S. E. 653 (W. Va.). The record shows that there was no removal. The only act of the Supervising Inspector is filing the charges *supra*, on the 16th day of May, without reference to the proceeding before the Local Board in the "matter of the investigation of the collision. * * * , by the Local Board. Lord, one of the Local Inspectors, in answer to, "Q. Was there ever any appeal taken by anyone from that decision to the Supervising Inspector? A. No." The Supervising Inspector testified that when the findings and decision of the Local Board was submitted "in the usual way" on April 18th, that he began a very thorough study and analysis of the same, and that on the 14th

of May he sent a telegram to the "Bureau" as follows: [75]

"My investigation satisfies me that charges should be filed against Master 'West Hartland' who was exonerated in investigation of Local Board. Have I power to file charges direct and proceed to try case, or should I order Local Board to file charges."

And in response to this telegram on the morning of the 16th of May he was advised by the "Bureau" that "he did have authority to prefer the charges and conduct trial." He further testified:

"Although my review of the testimony convinced me that Captain Alwen was culpable in his management of the 'West Hartland,' I desired to afford him an opportunity to testify in his own behalf, and, in order to proceed in a definite way, I decided to present the matter in the form of charges."

It appears to be conclusively established that no appeal was taken, and that no review in any legal sense was had. This is further confirmed by the fact that the "investigation" of the Local Board concerned others named in the decision, whereas, the "direct charge" concerns only one of the parties named in the decision, the plaintiff; and from the decision of the Supervising Inspector. The act *supra* provides, that the decision of the Local Board may be *revoked, changed, or modified*, by the reviewing officer. The decision of the Supervising Inspector does not refer to the decision of the Local Board. The title of the proceeding is a separate

and distinct title, from the proceeding before the Local Board, and the testimony of the Supervising Inspector is to the effect that the proceeding was a "direct charge," rather than a review on appeal, although, in proceeding on review, after appeal, he was empowered by the act *supra*, as well as by the rules and regulations to hear further testimony, and to administer oaths to witnesses. The proceeding is somewhat akin to an appeal in Admiralty trials, where the Circuit Court of Appeals, in reviewing the case, may receive further testimony in determining the pending issue. It is not contended at bar, nor suggested in the brief, and I know of no warrant of statute that empowers the Supervising Inspector to file charges before himself, and hear and determine the same upon [76] an issue such as is here presented. The sole function is what the title indicates, Supervising Appellate Tribunal, and to determine an issue on appeal the matter must be removed from the Local Inspection *Court* to that of the Supervising Inspector's Appellate *Court*, within 30 days, and provision is made by statute for the removal and the procedure provided by law; and after removal the matter may be considered upon the evidence before the Local Board, or further testimony may be taken. The fact that the Supervising Inspector, on June 24th, "notified" Captain Alwen, the plaintiff, that "in this hearing" he was proceeding as on continuance of the review "undertaken of the decision of the Local Inspectors" cannot confer jurisdiction, because, no appeal or review had been taken and the proceeding instituted

was a "direct charge." The decision of the Supervising Inspector is without warrant of law and may not be enforced.

NETERER,
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Feb. 3, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [77]

In the United States Court for the Western District
of Washington, Northern Division.

No. 276-E—IN EQUITY.

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector for
the Eleventh District, Steamboat Inspection
Service, Department of Commerce of the
United States, DONALD AMES, and
HARRY C. LORD, Local Inspectors, Steam-
boat Inspection Service, Department of Com-
merce of the United States,

Defendants.

Decree.

This cause having regularly come on for trial before the Court on the 10th day of January, 1922, said plaintiff appearing by his attorney Howard G. Cosgrove and the said defendants appearing by their attorney Frederick Milverton, Special Assis-

tant United States Attorney, and evidence having been introduced, all parties resting, and the cause having been submitted to the Court upon briefs, and the Court having heretofore on the 2d day of February, 1922, filed herein his memorandum decision;

The Court does hereby find:

1. That the said defendant William Fisher was, on the 1st day of April, 1921, ever since has been, and now is, a resident and citizen of the city of Seattle, State of Washington, and the duly appointed, qualified and acting Supervising Inspector for the Eleventh District, Steamboat Inspection Service, Department of Commerce of the United States with headquarters at Seattle, Washington.

2. That the said defendants Donald Ames and Harry C. [78] Lord were on the 1st day of April, 1921, ever since have been, and now are, residents and citizens of the city of Seattle, State of Washington, and respectively United States Inspector of Hulls and United States Inspector of Boilers, Steamboat Inspection Service, Department of Commerce of the United States, together making the Local Board of Steamboat Inspectors for said Steamboat Inspection Service, Department of Commerce of the United States and with headquarters at Seattle, Washington.

3. That the said plaintiff on the 3d day of March, 1921, and ever since has held and does now hold the license of the United States as master of steam vessels for all oceans and as pilot on Puget Sound and other waters, said license numbered 73,609, is-

sue No. 5, 5, the same having been issued for the period of five years from December 2, 1918.

4. That the value of the said license to the said plaintiff at the time of the commencement of this action and ever since has been and is now more than the sum of \$3,000.00.

5. That on and during the 1st day of April, 1921, the said plaintiff was the duly appointed and acting master of the United States steamboat "West Hartland"; that on said date said vessel collided with the steamboat "Governor" in the vicinity of Point Wilson, Washington, in the waters of Puget Sound.

6. That the said defendants Donald Ames and Harry C. Lord, as such Local Board of Steamboat Inspectors, immediately upon said collision taking place, investigated the same and found Harry H. Marden in charge of the "Governor" culpable and exonerated the plaintiff master in charge of the "West Hartland" from all responsibility for said collision, filing their written findings and decision on the 16th of April, 1921.

7. That no appeal from said findings and decision as affecting said plaintiff was ever taken, and that no review of [79] said findings and decision was ever had.

8. That on July 22, 1921, the said defendant William Fisher, as said Supervising Inspector, mailed to the said plaintiff the following findings, conclusions and decision under the style:

“IN THE MATTER OF THE TRIAL OF CHARGES PREFERRED BY THE U. S. SUPERVISING INSPECTOR, ELEVENTH DISTRICT, AGAINST CAPTAIN JOHN ALWEN, MASTER OF THE S. S. WEST HARTLAND, IN CONNECTION WITH THE COLLISION BETWEEN THAT VESSEL AND THE S. S. GOVERNOR, ON THE MORNING OF APRIL 1, 1921.”

* * * * *

“I, therefore, hold and it is my decision that Captain John Alwen is guilty of negligence, unskillfulness, and inattention to his duties as Master of the S. S. West Hartland * * * in connection with the collision between that vessel and the S. S. Governor, and his license as Master and Pilot, No. 73609, issue No. 5, 5, dated December 2, 1918, is hereby suspended for a period of two years, from this date July 22d, 1921. Captain Alwen is directed to deposit his license with the U. S. Local Inspectors at Seattle, where it will remain during the period of its suspension.”

which findings, conclusion and decision are more particularly set forth in Plaintiff's Exhibit “C” attached to and made a part of plaintiff's complaint.

9. That the said defendant William Fisher, as such Supervising Inspector, threatens to enforce his said order suspending the said license of the said plaintiff.

10. That by reason of the said defendant William Fisher's said findings, decision and order and his said threat to enforce said order, the said plaintiff has been irretrievably damaged and has no plain, speedy and adequate remedy at law in the premises.

11. That since March 31, 1921, neither the said defendant William Fisher, as said Supervising Inspector, nor the said Supervising Inspector General ever acquired jurisdiction over [80] the said plaintiff or his said license or his right to use and enjoy the same on account or by reason of the conduct or actions of said plaintiff as master of said "West Hartland" immediately preceding, at, and immediately after the said collision, or on account or by reason of said findings and decision of said Local Board, or at all.

NOW, THEREFORE, it is considered, ordered, adjudged and decreed by the Court:

1. That the said findings, decision and order of the said defendant William Fisher, as such Supervising Inspector, and the decision and order of the Supervising Inspector General affirming the said defendant William Fisher's said findings, decision and order are null and void.

2. That the said defendant William Fisher, as Supervising Inspector, is hereby perpetually enjoined from filing with said Local Board his said findings, decision and order, or either or any of them, or any decision or order, or any findings, decision, or order in any wise reversing, changing or modifying the said findings and decision of the said

Local Board as to the said plaintiff or his license, or from doing anything tending to reverse, modify or change said decision and order of said Local Board as to the said plaintiff or his said license in the said proceeding.

5. That the said defendants Donald Ames and Harry C. Lord, as such Local Board, are hereby perpetually enjoined from placing on file with the records of said Local Board, or from complying with, recognizing or receiving any findings, decision or order of the said defendant William Fisher, as Supervising Inspector, or from the said Supervising Inspector General, or anyone else, tending to modify, change or reverse their said decision as such local board as to the said plaintiff; and that they, as such [81] Board, and each of them, are perpetually enjoined from cancelling or suspending the said license of the said plaintiff for or on account of his actions or conduct immediately preceding, at, or immediately following said collision, provided,

That if prior to the entering of this order the said defendant William Fisher, as such Supervising Inspector, or the said Supervising Inspector General shall have filed with said Local Board any findings, or order suspending or cancelling the license of the said plaintiff.

To all of which deft. excepts.

Done in open court this 21st day of February, 1922.

JEREMIAH NETERER,

Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Feb. 21, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [82]

United States District Court, Western District of
Washington, Northern Division.

No. 276-E—IN EQUITY.

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector for
the Eleventh District, of Steamboat Inspec-
tion Service, Department of Commerce of
the United States, DONALD AMES and
HARRY C. LORD, Local Inspectors, Steam-
boat Inspection Service, Department of Com-
merce of the United States,

Defendants.

Assignments of Error.

Come now the above-named defendants, by and through their attorneys, Thomas P. Revelle and John A. Frater, and respectfully submit the following assignments of error upon which they rely as supporting their appeal from the judgment and decree entered on the 21st day of February, 1922, in said cause in the District Court of the United States for the Northern Division of the Western District of Washington and under which assign-

ments of error said appellants seek reversal of the decision, judgment and decree of said trial Court:

I.

That the District Court erred in finding that the plaintiff on the 3d day of March, 1921, and ever since has held and does now hold the license of the United States as master of steam vessels for all oceans and as pilot on Puget Sound and other waters, said license numbered 73609, issue No. 5, 5, the same having been issued for the period of five years from December 2, 1918.

II.

That the District Court erred in finding that the value of the said license to the said plaintiff at the time of the commencement of this action and ever since has been and is now more than the sum of \$3,000.00. [83]

III.

That the District Court erred in finding that no appeal from the written findings and decision of the defendants Donald Ames and Harry C. Lord filed on April 16th, 1921, as affecting said plaintiff, was ever taken, and that no review of said findings and decision was ever had.

IV.

That the District Court erred in finding that by reason of the findings, conclusion and order of the defendant William Fisher, mailed to the plaintiff on July 22d, 1921, and of said William Fisher's threat to enforce said order, the said plaintiff has been irretrievably damaged and has no plain, speedy and adequate remedy at law in the premises.

V.

That the District Court erred in finding that since March 31st, 1921, neither the said defendant William Fisher, as said Supervising Inspector, nor the Supervising Inspector General ever acquired jurisdiction over the said plaintiff or his said license or his right to use and enjoy the same on account or by reason of the conduct or actions of said plaintiff as master of said "West Hartland" immediately preceding, at, and *a* immediately after the said collision, or on account or by reason of said findings and decision of said Local Board, or at all.

THOS. P. REVELLE,

United States Attorney.

JOHN A. FRATER,

Assistant United States Attorney,

Attorneys for Defendants.

Due receipt of a copy of the foregoing assignments of error is hereby acknowledged this — day of August, 1922.

Attorney for Plaintiff. [84]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Aug. 21, 1922. F. M. Harshberger, Clerk.
[85]

United States District Court, Western District of
Washington, Northern Division.

No. 276-E—IN EQUITY.

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector for
the Eleventh District, of Steamboat Inspec-
tion Service, Department of Commerce of
the United States, DONALD AMES and
HARRY C. LORD, Local Inspectors, Steam-
boat Inspection Service, Department of Com-
merce of the United States,

Defendants.

Petition for Appeal.

Come now the above-named defendants, through
their attorneys, Thomas P. Revelle and John A.
Frater, feeling themselves and each of them ag-
grieved, do hereby appeal from the judgment and
decree signed and entered in the foregoing cause on
the 21st day of February, 1922, in the District Court
of the United States for the Western District of
Washington, Northern Division, and from each and
every part thereof, and do herewith present their
several assignments of error, and do hereby pray
the allowance of said appeal and that so much and
such portions of the record, the statement of facts
and exhibits as may be necessary to execute said
appeal, be forwarded from said court by the Clerk

of the District Court of the United States for the Northern Division of the Western District of Washington, duly certified and authenticated under the seal of the said trial Court to the Circuit Court of Appeals for the Ninth Circuit.

THOS. P. REVELLE,

United States Attorney.

JOHN A. FRATER,

Assistant United States Attorney,

Attorneys for Defendants.

Due receipt of a copy of the foregoing petition and appeal is hereby acknowledged this —— day of August, 1922.

Attorney for Plaintiff. [86]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Aug. 21, 1922. F. M. Harshberger, Clerk. [87]

United States District Court, Western District of Washington, Northern Division.

No. 276-E —IN EQUITY.

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector for the Eleventh District, of Steamboat Inspection Service, Department of Commerce of the United States, DONALD AMES and

HARRY C. LORD, Local Inspectors, Steam-
boat Inspection Service, Department of Com-
merce of the United States,

Defendants.

Order Allowing Appeal.

BE IT REMEMBERED: That this matter came on duly for hearing on the petition of the defendants, through their attorneys, Thomas P. Revelle and John A. Frater, for the allowance of their petition and appeal in the foregoing entitled cause from the judgment of this Court entered on the 21st day of February, 1922, and the said appeal being from said judgment to the Circuit Court of Appeals of the United States of America for the Ninth Circuit; and this Court being fully advised in the premises;

IT IS HEREBY ORDERED that the said appeal be allowed as prayed for and the Clerk of this Court is hereby directed to formulate a true copy of the transcript of the records and proceedings to the extent necessary to properly present said appeal, together with exhibits and other matters of record and the memorandum decision and formal judgment and decree of this court, all duly authenticated, and send same to the said Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 21st day of August, 1922.

EDWARD E. CUSHMAN,

Judge. [88]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division. Aug. 21, 1922. F. M. Harshberger, Clerk.
[89]

United States District Court, Western District of
Washington, Northern Division.

No. 276-E—IN EQUITY.

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector for
the Eleventh District, of Steamboat Inspec-
tion Service, Department of Commerce of
the United States, DONALD AMES and
HARRY C. LORD, Local Inspectors, Steam-
boat Inspection Service, Department of Com-
merce of the United States,

Defendants.

Exception to Decree.

Come now the above-named defendants, by their
attorneys, Thomas P. Revelle and John A. Frater,
and respectfully except to the decree and findings
heretofore made and entered by the Court in the
above-entitled cause.

This exception is based upon the ground and for
the reason that the decree and findings herein are
contrary to the facts and the law applicable to this
case.

THOS. P. REVELLE,
United States Attorney.

JOHN A. FRATER,
Assistant United States Attorney.

The foregoing exception is hereby allowed this 28 day of December, 1922.

JEREMIAH NETERER,
United States District Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 28, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [90]

United States District Court, Western District of
Washington, Northern Division.

No. 276-E.

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector for
the Eleventh District, of Steamboat Inspec-
tion Service, Department of Commerce of
the United States, DONALD AMES and
HARRY C. LORD, Local Inspectors, Steam-
boat Inspection Service, Department of Com-
merce of the United States,

Defendants.

**Order Extending Time to November 1, 1922, for
Filing Statement of Evidence.**

BE IT REMEMBERED: That this matter came on duly and regularly before this court upon the application of the United States Attorney, and it appearing that this court is recessed during most of

this time and will be the greater portion of September, and that it will be difficult for Honorable Jeremiah Neterer, one of the Judges of this court, to settle the evidence in this case within the usual period; that the time for filing the statement of evidence be extended, now, therefore, it is hereby

ORDERED AND ADJUDGED that appellant's time for filing a proposed statement of evidence be and is hereby extended for a period of thirty days from and after the usual ten days allowed after the entry of the order allowing the appeal, or until November 1, 1922.

Done in open court this 21st day of August, 1922.

EDWARD E. CUSHMAN,
District Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Aug. 21, 1922. F. M. Harshberger, Clerk.
[91]

United States District Court, Western District of
Washington, Northern Division.

No. 276-E.

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector for
the Eleventh District, of Steamboat Inspection Service, Department of Commerce of

the United States, DONALD AMES and HARRY C. LORD, Local Inspectors, Steamboat Inspection Service, Department of Commerce of the United States,

Defendants.

**Order Extending Time to November 29, 1922, for
Filing Statement of Evidence.**

BE IT REMEMBERED: That this matter came on duly and regularly before this court, upon the application of the United States Attorney, and it appearing from his statement made in open court that the office of the United States Attorney has been unduly and more than usually congested with work during the past sixty (60) days, and that this condition is in nowise on account of any fault or lack of ability on the part of the United States Attorney, or his assistants, and that the time for filing the statement of evidence in this cause should be further extended for a period of thirty (30) days, now, therefore, it is

ORDERED AND ADJUDGED that appellants' time for filing the proposed statement of evidence be, and is hereby, extended for a period of thirty (30) days from and after this date.

Done in open court this 31st day of October, 1922.

JEREMIAH NETERER,

District Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Oct. 31, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [92]

United States District Court, Western District of
Washington, Northern Division.

No. 276.

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector for
the Eleventh District, of Steamboat Inspec-
tion Service, Department of Commerce of
the United States, DONALD AMES and
HARRY C. LORD, Local Inspectors, Steam-
boat Inspection Service, Department of Com-
merce of the United States,

Defendants.

**Order Extending Time to December 28, 1922, for
Filing Statement of Evidence.**

BE IT REMEMBERED: That this matter came
on duly and regularly before this Court, upon the
application of the United States Attorney, and it
appearing from his statement made in open court
that the office of the United States Attorney has
been unduly and more than usually congested with
work during the past sixty (60) days, and that this
condition is in no wise on account of any fault or
lack of ability on the part of the United States At-
torney, or his assistants, and that the time for filing
the statement of evidence in this cause should be
further extended for a period of thirty (30) days,
now, therefore, it is

ORDERED AND ADJUDGED that appellants' time for filing the proposed statement of evidence be, and is hereby, extended for a period of thirty (30) days from and after this date.

Done in open court this 29th day of November, 1922.

JEREMIAH NETERER,

District Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Nov. 29, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [93]

United States District Court, Western District of
Washington, Northern Division.

No. 276-E—IN EQUITY.

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector for
the Eleventh District, of Steamboat Inspection
Service, Department of Commerce of
the United States, DONALD AMES and
HARRY C. LORD, Local Inspectors Steam-
boat Inspection Service, Department of
Commerce of the United States,

Defendants.

**Order Directing Transmission of Original Exhibits
to Circuit Court of Appeals for the Ninth Cir-
cuit.**

Upon motion of the attorneys for the defendants above named, and it appearing to the Court that there were introduced into evidence at the trial of the above-entitled suit certain original exhibits, to wit, Plaintiff's Exhibit No. 1, and Defendants' Exhibits "A," "B," "C," "D," and "E," and it further appearing to the Court that it is proper that such original files be sent up on appeal as part of the record and proceedings on appeal for inspection and consideration by the Circuit Court of Appeals, and the Court being further of the opinion that the expense of printing in said files and the transcript of record is not necessary to the proper consideration of the appeal or justified by the exigencies of the cause,—

It is ordered that the Clerk of the above-entitled court be, and he is hereby directed to transmit the aforesaid [94] exhibits to the Circuit Court of Appeals for the Ninth Circuit, to be considered by said court of appeals as a part of the record in this cause, but not to be printed.

Done in open court this 12th day of January, 1923.

JEREMIAH NETERER,
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division. Jan. 11, 1923. F. M. Harshberger, Clerk.
By S. E. Leitch, Deputy. [95]

United States District Court, Western District of
Washington, Northern Division.

IN EQUITY—No. 276—E.

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector of
the Eleventh District, Steamboat Inspec-
tion Service, Department of Commerce of
the United States, DONALD AMES and
HARRY C. LORD, Local Inspectors, Steam-
boat Inspection Service, Department of
Commerce of the United States,

Defendants.

Notice of Filing of Statement of Evidence.

To John Alwen and Howard G. Cosgrove, His
Attorneys:

You, and each of you, will please take notice that
William Fisher, Supervising Inspector of the
Eleventh District, Steamboat Inspection Service,
Department of Commerce of the United States;
Donald Ames and Harry C. Lord, Local Inspectors,
Steamboat Inspection Service, Department of Com-
merce of the United States, the defendants above
named, have this day filed and lodged with the clerk
of the above-entitled court their proposed statement

of the evidence herein, a copy of which is herewith served upon you.

You are further notified that the above-named defendants will appear before the above-entitled court on the 10th day of January, 1923, at 10 o'clock A. M., then and there to make application for the approval and settlement of said statement of facts by said court.

THOMAS P. REVELLE,
United States Attorney,
DEWOLFE EMORY,
Assistant United States Attorney,
Attorneys for Defendants.

Service of a true copy of the above notice of filing of statement of evidence together with a true copy of defendants' proposed statement of evidence Dec. 1922.

HOWARD G. COSGROVE,
Attorney for Plaintiff. [96]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 29, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [97]

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United States District Court, Western District of
Washington, Northern Division.

IN EQUITY—No. 276-E.

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector for
the Eleventh District of Steamboat Inspec-
tion Service, Department of Commerce of
the United States, DONALD AMES and
HARRY C. LORD, Local Inspectors, Steam-
boat Inspection Service, Department of
Commerce of the United States,

Defendants.

Order Approving Statement of Evidence on Appeal.

The following is a true, complete and properly prepared statement of the substance of all the testimony introduced and admitted upon the trial of the above-entitled cause in the United States District Court for the Western District of Washington, Northern Division, and, together with the original exhibits therein and herein referred to and hereby made a part of said statement, constitute all of the evidence and exhibits introduced and admitted in evidence upon said trial essential to the decision of the questions presented by the appeal heretofore petitioned for herein by the defendants and allowed from the final judgment in this cause in said District Court at said trial, and said statement is hereby approved.

Dated at Seattle, Washington, this 15th day of January, 1923.

JEREMIAH NETERER,
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 15, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [98]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN EQUITY—No. 276-E.

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector of the Eleventh District, Steamboat Inspection Service, Department of Commerce of the United States, DONALD AMES and HARRY C. LORD, Local Inspectors, Steamboat Inspection Service, Department of Commerce of the United States,
Defendants.

Statement of Facts.

STATEMENT OF FACTS Occurring at the Trial of the Above-entitled Cause, Proposed by the Defendant, for Certification on Appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

BE IT REMEMBERED, that the above-entitled cause came on regularly for trial, in the above-entitled court, before the Honorable Jeremiah Neterer, Judge of the said court, sitting in Equity, at Seattle, Washington, on the 10th day of January, 1922, at the hour of ten o'clock A. M. of said day, the respective parties being represented as follows:

John Alwen, the plaintiff above named, being represented by Howard G. Cosgrove, Esquire; and William Fisher, Supervising Inspector of the Eleventh District, Steamboat Inspection Service, Department of Commerce of the United States, Donald Ames and Harry C. Lord, Local Inspectors, Steamboat Inspection Service, [99] Department of Commerce of the United States, defendants above named, being represented by Frederick Milverton, Esquire, Special Assistant to the United States Attorney.

The statement of the issues involved was then made by the attorneys for the respective parties, and thereupon the following testimony was introduced on behalf of the plaintiff:

Testimony of John Alwen, for Plaintiff.

JOHN ALWEN, called as a witness on behalf of the plaintiff, was sworn and testified as follows:

My name is John Alwen. I am the plaintiff in this case and reside at #2023 Boylston Avenue North, Seattle. By occupation I am a master mariner and have been engaged in the maritime business since May, 1879. I am 59 years of age and have a family consisting of a boy and a girl. My wife and daughter are dependent upon me. On April 1st I was master of the SS. "West Hartland" which had a collision with the SS. "Governor" on that day. After that time the Local Board, the defendants in this case, held a hearing at which I appeared. I had a verbal order to go to the Local Inspector's office. After the hearing before the Local Board I appeared as a witness only. The Local Board never preferred any charges against me on account of my actions at the time of the collision. No one else has ever preferred any charges against me except Captain Fisher.

THEREUPON, the witness was handed a copy of Plaintiff's Exhibit "B" as it appears in the pleadings and then testified as follows: [100]

That is a copy of Captain Fisher's letter to me which I received on May 17th, the day after it is dated. It came to me through the mail.

THEREUPON the document was introduced in evidence without objection and marked Plaintiff's Exhibit 1. The witness proceeded as follows over

(Testimony of John Alwen.)

the objection of counsel for the defendants as to the materiality of the question:

I had no knowledge or information from any source prior to the receipt of this letter that the defendant Fisher was reviewing, or intending to review, the decision of the Local Board. My salary as master of the "West Hartland" at the time of the collision was \$357.50. I am familiar with the present going wage of masters of similar vessels at this port, and there has been a 15% reduction on those wages since May, or the time of the collision.

On cross-examination, the witness JOHN ALWEN testified as follows:

The first notice I had that Captain Fisher was reviewing the decision of the Board of Local Inspectors was the letter on May 17th, the letter which has just been received in evidence. From that letter I understood that Captain Fisher was preferring charges against me and wished me to call at his office at my earliest convenience, which I did. The first I knew that Captain Fisher was reviewing the decision of the Board of Local Inspectors was the first day of the trial, that is, at the first day of the trial before Captain Fisher. [101] I have alleged in my bill that I am not qualified for any other business except master. I cannot say whether I am qualified as a port captain, as I have never held that position. I know the duties of a port captain. I could not fill the office of superintendent of stevedores now. I might have done so ten or fifteen years ago.

(Witness excused.)

Testimony of Harry C. Lord, for Plaintiff.

HARRY C. LORD, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

My name is Harry C. Lord. I am one of the defendants in this action and a member of the Local Board of Steamboat Inspectors. I am familiar with the records of my office as they now exist and have existed since April 1, 1921. I recollect the reference previously made in this case to the collision between the "Governor" and the "West Hartland" and to a hearing by the Local Board subsequent to that collision. The Local Board made findings and a decision which exonerated Captain Alwen.

Q. Was there ever any appeal taken by anyone from that decision to the Supervising Inspector?

Mr. MILVERTON.—I object to that as incompetent, irrelevant and immaterial. The new law provides several ways by which it may be reviewed.

The COURT.—Let it go in the record and get both of your views of it.

A. No. [102] Captain Fisher, as Supervising Inspector, never asked the Local Board to correct its findings and decision. Nor did he ever officially ask the Local Board to explain its findings and decision; only in conversation. He made no request for any explanation or correction. Captain Fisher never filed any charges with the Local Board against Captain Alwen on account of this collision. At the time the local hearing was had there were

(Testimony of Harry C. Lord.)

no charges then pending before the Local Board against Captain Alwen. Captain Alwen appeared before the local board as a witness only. The Local Board furnished to Captain Fisher a certified copy of the testimony taken before it at its hearings.

Q. Since this case was begun, has Captain Fisher, as Supervising Inspector, or the Supervising Inspector General, filed with your Local Board any order or decision tending to affect or change or modify your finding or decision as to Captain Alwen? A. None whatever.

Mr. MILVERTON.—Same objection, as not required by the statute, may it please your Honor.

The COURT.—How is that?

Mr. MILVERTON.—I make the same objection.

The COURT.—Yes.

Mr. MILVERTON.—As being incompetent, irrelevant and immaterial.

The COURT.—Yes.

Mr. MILVERTON.—And not required by statute.

Mr. COSGROVE.—This is an equitable action, and we can't keep track of all the orders that might have been issued. [103]

The COURT.—He may answer.

A. None whatever.

On cross-examination, the witness HARRY C. LORD testified as follows:

I held the investigation under the statute and regulations by which we are supposed to investigate the cause of any disaster of the kind. Captain Alwen was brought before us by oral summons.

(Testimony of Harry C. Lord.)

He was not subpoenaed; just an oral invitation to appear the same as the rest of the witnesses. I followed the usual procedure that is generally followed in matters of that kind. The object was the fixing of responsibility by investigation. Captain Alwen was exonerated by us. There was no official request for any explanation or correction of our decision from Captain Fisher. No request was made whatever by Captain Fisher. There was a conversation had after the decision; I could not tell how long after. We found nothing to warrant our preferring charges against Captain Alwen. Our investigation was to see whether Captain Alwen was in part responsible for the collision or whether there was any violation under the statutes in regard to navigation for which he was responsible as a licensed officer. Captain Alwen probably knew this. He only appeared as a witness. He was not present at the rest of the hearing. He made no request to be present at any of the rest of [104] the hearing. I do not remember whether Captain Alwen received a written request to be present at the hearing or not. He reported at the office the matter pertaining to the collision and it naturally followed that he was to appear as a witness and to bring such witnesses as a master of a vessel would bring—such witnesses as he knew would have any knowledge of the subject. We gave him that opportunity to produce whatever witnesses he wanted to, and we questioned other witnesses to find out whether or not we could add to the testimony. We wanted to get

(Testimony of Captain William Fisher.)

it all. We had to depend upon him for the names of members of his crew or somebody connected with the vessel.

(Witness excused.)

THEREUPON counsel for the plaintiff called the Court's attention to a typographical error on page 5, line 9, of the amended complaint, stating that the exhibit thereat referred to as Plaintiff's Exhibit "B" should be changed to Plaintiff's Exhibit "D." The correction was allowed by the Court.

(Plaintiff rests.)

Testimony of Captain William Fisher, for Defendants.

CAPTAIN WILLIAM FISHER, one of the defendants and called as witness on the part of the defendants, having been first duly sworn on oath testified as follows:

My name is William Fisher. My official title is United States Supervising Inspector Steamboat Inspection Service, Department of Commerce, Eleventh District. I have held that position for over three years and still [105] hold it. I heard the reference heretofore made in this case to an investigation held by the local board of Inspectors and to the findings and a decision made by that Board. I first knew of these findings and decision when they were submitted to me in the usual way on April 18, 1921. The findings and decision are the same as set out in Exhibit "A" of the bill of

(Testimony of Captain William Fisher.)

complaint in this case. Upon receiving the findings and decision of the Local Board I immediately began a very thorough study of it, reviewing it over and over a great many times as a whole and in detail and continued reading, analyzing, studying and reviewing these findings and decision over a period of about two weeks. I completed my consideration and analysis of the findings and decision about the end of April or very early in May, the first or second of May. I have a copy of a telegram I sent to the Bureau on the 14th of May.

(Witness produces paper.)

Mr. COSGROVE.—I object to the introduction of any telegram or any further evidence as to what he did, prior to May 17th. The statute provides that upon a review the delinquent is entitled to be represented by counsel, and he never gave any notice prior to May 17th. What he did before is without any connection with this case.

Mr. MILVERTON.—I want to show what Captain Fisher did within the thirty days, showing compliance with the statute. What he did afterwards, may it please [106] the Court, was pursuant to another section of the statute—the calling of witnesses—of which Captain Alwen had notice.

THEREUPON, after further discussion, the telegram of May 14, 1921, was identified by the witness, marked Defendant's Exhibit "A" and introduced in evidence over the objection of counsel

(Testimony of Captain William Fisher.)

for the plaintiff, and the witness proceeded as follows:

After a thorough review of the testimony adduced by the local inspectors in their investigation of the collision, I concluded that their decision exonerating Captain Alwen was not warranted by the evidence before them. Nothing could be gained by returning the evidence to the local inspectors or advising them that I considered that Captain Alwen had not performed his duties, because they had already considered the evidence. Although my review of the testimony convinced me that Captain Alwen was culpable in his management of the "West Hartland," I desired to afford him an opportunity to testify in his own behalf, and in order to proceed in a definite way I decided to present the matter in the form of charges, which are the ones that appear as Plaintiff's Exhibit "B." In that way, that would permit Captain Alwen to question witnesses that I summoned and permit him to summon witnesses and be assisted by counsel, and enable him to prepare his own defense. I prepared a rough draft of the charges which are set out in the complaint as Exhibit "B" on the 14th of May. Then I decided to verify my [107] understanding of the statutes in regard to authority to prefer charges after my reviewing, in addition to my review, and therefore I wired to the Bureau on the 14th of May and received a wire to my telegram on the morning of the 16th and the Bureau advised me that I did

(Testimony of Captain William Fisher.)

have authority to prefer the charges and conduct a trial, so I then had the charges typewritten and deposited them in the mail. This was done on the 16th of May about 5 o'clock. They were addressed to Captain John Alwen. In response to these charges Captain Alwen appeared before me. My recollection is that the hearing commenced on May 20th and continued until July 22d. The taking of testimony was completed on July 22d, and Mr. Reagan, counsel for Captain Alwen, requested a further delay in order to file a brief. Upon receipt of his brief I concluded my study of the testimony and his brief and rendered the decision. I account for the long period of time for the hearing because it was postponed from time to time—sometimes at my request and sometimes at the request of Mr. Reagan. After the evidence was in Mr. Reagan made a motion to dismiss the proceedings, alleging lack of jurisdiction on my part. My recollection is that this objection was made on the 20th of June.

THEREUPON counsel for the defendants offered in evidence a copy of the objections made by counsel for Captain Alwen at the hearing before Captain Fisher on June 21, 1921. This instrument was admitted in evidence without objection and marked Defendants' Exhibit "B."

[108]

Thereafter the witness, Captain William Fisher, continued as follows:

(Testimony of Captain William Fisher.)

During the hearing before me I notified Captain Alwen that in that hearing I was proceeding as a continuance of the review that I had undertaken of the decision of the Local Inspectors. My recollection is that I made that statement in June. June 24th is the first time that I stated that it was a continuance of my review or a part of the review.

THEREUPON counsel for the defendants introduced in evidence an extract of the record of the hearing before Captain Fisher which was marked Defendants' Exhibit "C."

THEREUPON the witness, Captain William Fisher, continued as follows:

Exhibits "B" and "C," which have just been introduced in evidence, are copies of the record of the proceedings had before me. I arrived at my final findings and conclusions and decision sometime in the latter part of July. I immediately served a copy of my findings, conclusions and decision on Captain Alwen. Captain Alwen appealed from my decision to the Supervising Inspector General. I made the reading of the testimony taken at the investigation before the Local Board early in April. I have been connected with ships and shipping all my life. I have been connected with the Steamboat Inspection Service for nine years. [109]

Q. Do you know, captain, whether a man who is qualified as a master ordinarily would be qualified to hold any other position?

(Testimony of Captain William Fisher.)

Mr. COSGROVE.—I object, if the Court please.

Q. (Continuing.) In connection with ships or shipping? A. Yes, sir.

The COURT.—Sustained.

Mr. MILVERTON.—There is a statement here that he could not do anything else except act as master.

The COURT.—Oh, that is immaterial. We are not concerned about that.

Q. (Mr. MILVERTON.) Have you any knowledge of any suspension of the license of Captain Alwen prior to this particular suspension?

Mr. COSGROVE.—I object to that, if the Court please.

A. Yes, sir.

The COURT.—Sustained.

Mr. COSGROVE.—There is a paragraph in defendants' answer which I wish to have stricken as scandalous.

The COURT.—It may be stricken.

Mr. COSGROVE.—It covers that particular matter, that is, that portion of paragraph four.

The COURT.—Yes, that part is entirely immaterial and improper there.

Mr. COSGROVE.—Beg pardon?

The COURT.—I say that is entirely immaterial and it is improperly there. This man cannot, of course, be convicted here on a prior suspension, which already evidently had been served.

Mr. MILVERTON.—It was brought out in the answer by reason of the fact that they alleged he

never had been suspended before; that brought out that denial. [110]

Mr. COSGROVE.—With the exception of three months.

(No cross-examination. Witness excused.)

THEREUPON counsel for the defendants offered in evidence a certified copy of the report of the Committee on Merchant Marine and Fisheries of the House of Representatives, which was marked Defendants' Exhibit "D" for identification.

Thereafter there was introduced in evidence a certified copy of the decision of the Inspector General, upon the appeal of Captain Alwen, said exhibit being marked Defendants' Exhibit "E."

THEREUPON the evidence was closed.

[Endorsed]: Lodged in the United States District Court, Western District of Washington, Northern Division. Dec. 28, 1922, and filed Jan. 15, 1923, as settled and approved. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [111]

United States District Court, Western District of
Washington, Northern Division.

No. 276-E—IN EQUITY.

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector for
the Eleventh District of Steamboat Inspec-
tion Service, Department of Commerce of
the United States, DONALD AMES and
HARRY C. LORD, Local Inspectors Steam-
boat Inspection Service, Department of
Commerce of the United States,

Defendants.

Praeceptum for Transcript of Record.

To F. M. Harshberger, Clerk of the Above-entitled
Court:

Kindly prepare, certify and transmit to the
Clerk of the Circuit Court of Appeals for the Ninth
Circuit at San Francisco, California, a typewritten
transcript of the record on appeal in the above-
entitled cause, containing the following portions
of the record in the above-entitled cause, to wit:

1. Complaint.
2. Answer of defendants.
3. Amended complaint.
4. Order allowing amendment to complaint.
5. Stipulation allowing defendants' time to an-
swer amended complaint.

6. Answer of defendants to amended complaint.
[112]
7. Decision.
8. Decree.
9. Assignments of error.
10. Exceptions.
11. Petition for appeal.
12. Order allowing appeal.
13. Original citation.
14. Order directing forwarding of original exhibits to Circuit Court of Appeals.
15. Order extending time for filing statement of evidence to November 1, 1922.
16. Order extending time for filing statement of evidence until November 29, 1922.
17. Order extending time for filing statement of evidence until December 28, 1922.
18. Notice of filing of statement of evidence.
19. Statement of evidence.
20. Order approving statement of evidence.
21. Praecipe.

THOMAS P. REVELLE,
United States Attorney.

DE WOLFE EMORY,
Special Assistant United States Attorney.

Received a copy of the within praecipe this 10th day of January, 1922.

HOWARD G. COSGROVE,
Attorney for Pltf.

[Endorsed]: Filed in the United States District Court, Western District of Washington,

Northern Division. Dec. 29, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [113]

In the United States District Court for the Western District of Washington, Northern Division.

No. 276-E.

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector for the Eleventh District, Steamboat Inspection Service, Department of Commerce of the United States, DONALD AMES and HARRY C. LORD, Local Inspectors Steamboat Inspection Service, Department of Commerce of the United States,

Defendants.

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record consisting of pages numbered from 1 to 113, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause, as is required by *praeceipe* of coun-

sel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred in my office on behalf of the appellants for making [114] record, certificate of return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fees (Sec. 828, R. S. U. S.) for making record, certificate or return, 328 folios at 15¢	\$49.20
Certificate of Clerk to transcript of record, 4 folios at 15¢60
Seal to said certificate20
Certificate of Clerk to transcript of record, 3 folios at 15¢45
Seal to said certificate20

I hereby certify that the above costs for preparing and certifying record, amounting to \$50.65, will be included in my quarterly account to the Government, of fees and emoluments for the quarter ending March 31, 1923, as constructive earnings.

I further certify that I hereto attach and herewith transmit the original citation issued in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 22d day of January, 1923.

[Seal] F. M. HARSHBERGER,
Clerk of the United States District Court, Western
District of Washington. [115]

United States District Court, Western District of
Washington, Northern Division.

No. 276-E—IN EQUITY.

JOHN ALWEN,

Plaintiff,

vs.

WILLIAM FISHER, Supervising Inspector for
the Eleventh District, Steamboat Inspection
Service, Department of Commerce of the
United States, DONALD AMES and
HARRY C. LORD, Local Inspectors Steam-
boat Inspection Service, Department of Com-
merce of the United States,

Defendants.

Citation.

WILLIAM FISHER, Supervising Inspector for
the Eleventh District, Steamboat Inspection
Service, Department of Commerce of the
United States.

DONALD AMES and HARRY C. LORD, Local
Inspectors, Steamboat Inspection Service, De-
partment of Commerce of the United States.

To John Alwen and Howard G. Cosgrove, His Attorney, GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, California, thirty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the Clerk's office of the United States District Court for the Western District of Washington, Northern Division, wherein William Fisher, Supervising Inspector for the Eleventh District, of Steamboat Inspection Service, Department of Commerce of the United States, and Donald Ames and Harry C. Lord, Local Inspectors Steamboat Inspection Service, Department of Commerce of the United States, are the appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in said appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf. [116]

WITNESS, the Honorable JEREMIAH NETERER, Judge of the United States District Court of the Western District of Washington, Northern Division, this 28th day of December, 1922.

JEREMIAH NETERER,
Judge. [117]

[Endorsed]: No. 276-E. In the District Court of the United States for the Western District of Washington, Northern Division. John Alwen vs. William Fisher et al. Citation. Filed in the United States District Court, Western District of Wash-

ington, Northern Division. Dec. 28, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

[Endorsed]: No. 3975. United States Circuit Court of Appeals for the Ninth Circuit. William Fisher, Supervising Inspector for the Eleventh District of Steamboat Inspection Service, Department of Commerce of the United States, and Donald Ames and Harry C. Lord, Local Inspectors Steamboat Inspection Service, Department of Commerce of the United States, Appellants, vs. John Alwen, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed January 24, 1923.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the United States Circuit Court of Appeals in
and for the Ninth Circuit.

IN EQUITY.—No. —.

WILLIAM FISHER, Supervising Inspector for
the Eleventh District, of Steamboat Inspec-
tion Service, Department of Commerce of
the United States, DONALD AMES and
HARRY C. LORD, Local Inspectors Steam-
boat Inspection Service, Department of Com-
merce of the United States,

Appellants,

vs.

JOHN ALWEN,

Appellee.

Additional Assignments of Error.

Come now the appellants above named, by and through their attorneys, Thomas P. Revelle and Dewolfe Emory, and respectfully submit the following assignments of error additional to those heretofore filed herein, upon which they rely as supporting their appeal from the judgment and decree entered on the 21st day of February, 1922, in said cause in the District Court of the United States for the Northern Division of the Western District of Washington, and under which assignments of error said appellants seek reversal of the decision, judgment and decree of said trial court:

VI.

That the District Court erred in decreeing that

the findings, decision and order of the Appellant William Fisher as Supervising Inspector, and the decision and order of the Supervising General affirming the said Appellant William Fisher's said findings, decision and order, are null and void.

VII.

That the District Court erred in perpetually enjoining the said William Fisher as Supervising Inspector from filing with said Local Board his findings, decision and order, or either or any of them, or any decision or order, or any findings, decision or order in any wise reversing, changing or modifying the findings and decision of the said Local Board as to the appellee herein or his license, or from doing anything tending to reverse, modify or change said decision and order of said Local Board as to the said appellee or his said license in the said proceedings.

VIII.

That the District Court erred in perpetually enjoining the Appellants Donald Ames and Harry C. Lord as members of the Local Board, from placing on file with the records of said Local Board or from complying with, recognizing or receiving any findings, decision or order of the said William Fisher as Supervising Inspector, or from the said Supervising Inspector or anyone else tending to modify, change or reverse their said decision as such Local Board as to the appellee herein, and from cancelling or suspending the license of the said appellee on account of his actions or conduct

immediately preceding, at, or immediately following the collision.

IX.

That the District Court erred in entering its decree herein in favor of the appellee and against the appellants, for the reason that said decree is not supported or sustained by the testimony adduced at the trial of this cause and the statement of evidence herein.

X.

That the District Court erred in failing to dismiss the bill of complaint herein.

THOS. P. REVELLE,

United States Attorney,

DE WOLFE EMORY,

Assistant United States Attorney,

Attorneys for Appellants.

[Endorsed]: No. 3975. In the United States Circuit Court of Appeals for the Ninth Circuit. William Fisher et al., Appellants, vs. John Alwen, Appellee. Additional Assignments of Error. Filed Pursuant to Order of Court Entered Feb. 15, 1923. F. D. Monckton, Clerk.

Plaintiff's Exhibit No. 1.

DEPARTMENT OF COMMERCE.

Steamboat-Inspection Service.

In Reply Refer to
File No. 788/1.

Office of Supervising Inspector, 11th District,
Seattle, Wash.

May 16, 1921.

Captain John Alwen,
2023 Boylston Ave. North,
Seattle, Washington.

Sir:—

You are hereby charged with violation of the U. S. Revised Statutes, sections 4439 and 4450, with negligence, unskillfulness and inattention to your duties as master of the steamship WEST HARTLAND on the night of March 31, 1921, and

1. the morning of April 1, 1921, in this, that being in doubt as to the course and intention of the steamship GOVERNOR as that vessel and the WEST HARTLAND were approaching each other, you failed to signify your lack of understanding, which resulted in the collision between the WEST HARTLAND and the GOVERNOR; and
2. further, in this, that having signaled the GOVERNOR of your intention to hold course and speed you failed to do so but without informing the GOVERNOR thereof you stopped and reversed engines, which resulted in the collision between the

WEST HARTLAND and the GOVERNOR;
3. and further, in this, that when the collision was imminent you did not take proper measures to avoid the collision which resulted in the collision between the WEST HARTLAND and the GOVERNOR.

At your earliest convenience you are directed to appear at this office to make answer to these charges. You may be represented by counsel if you so desire.

Respectfully,

WILLIAM FISHER,

Supervising Inspector, Eleventh District.

[Endorsed] : Case No. 276-E. Plaintiffs' Exhibit 1. United States District Court, Western Dist. of Washington. John Alwen vs. William Fisher etc. Filed Jan. 10, 1922. ———, Clerk.

No. 3975. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 25, 1923. F. D. Monckton, Clerk.

Defendants' Exhibit "A."

[TELEGRAM.]

Seattle, May 14, 1921.

Uhler

Supervising Inspector General

Steamboat Inspection Service

Washington

My investigation satisfies me that charges should be filed against master West Hartland who was exonerated in investigation of Local Board Have

I power to file charges direct and proceed to try case or should I order Local Board to file charges
Thirty days expires sixteenth

WILLIAM FISHER

Official business

Charge Steamboat Inspection Service
Washington, D. C.

[Endorsed]: Case No. 276-E. Defts. Exhibit "A." United States District Court, Western Dist. of Washington. John Alwen vs. William Fisher et al. Filed Jan. 10, 1922. ———, Clerk.

No. 3975. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 25, 1923. F. D. Monekton, Clerk.

Defendants' Exhibit "B."

Hearing resumed June 21, 1921. Reported by H. C. SODERMAN.

Mr. MacCORMAC SNOW, Attorney, United States Shipping Board, Portland, Oregon, present at hearing, and assisting Mr. REAGAN.

Mr. REAGAN.—We move to dismiss the charges as filed by the Supervising Inspector as they appear in the record in this case on the ground and for the reason that nowhere in the Statutes of the United States or in the Regulations issued by the Board of Supervising Inspectors, approved by the Secretary of Commerce is the power or authority given to the Supervising Inspector to hear charges as he has attempted to do in this case. This motion is based upon Sections 4407 and 4406, Revised Stat-

utes of the United States, as they appear in the Bulletin of the Department of Commerce, Steamboat Inspection Service, entitled Laws Governing the Steamboat-Inspection Service, Edition July 21, 1920. Section 4407, which provides, "Whenever a supervising inspector ascertains to his satisfaction that any master, mate, engineer, pilot, or owner of any steam vessel fails to perform his duties according to the provisions of this Title, he shall report the facts in writing to the board of local inspectors in the district where the vessel was inspected or belongs; and, if need be, he shall cause the negligent or offending party to be prosecuted; and if the supervising inspector has good reason to believe there has been, through negligence or any other cause, a failure of the board which inspected the vessel to do its duty, he shall report the facts in writing to the Secretary of Commerce; who shall cause immediate investigation into the truth of the complaint, and, if he deems the cause sufficient, shall remove any officer found delinquent." This section is the only section in the Revised Statutes which gives the right even to prefer charges to the Supervising Inspector, and in exact terms states how that is to be done, by filing them in writing with the Local Inspectors. Section 4450 of the Revised Statutes of the United States, the only statute in the Statutes of the United States provides that the "Local Board of Inspectors shall investigate all acts of incompetency or misconduct committed by any licensed officer while acting under the authority of his license, and shall have power to summon before

them any witnesses within their respective districts and compel their attendance by a similar process as in the United States circuit or district courts; and they may administer all necessary oaths to any witnesses thus summoned before them; and after reasonable notice in writing, given to the alleged delinquent, of the time and place of such investigation, such witness shall be examined, under oath, touching the performance of his duties by any such licensed officer; and if the Board shall be satisfied that such licensed officer is incompetent, or has been guilty of misbehavior, negligence or unskillfulness, or has endangered life, or willfully violated any provision of this Title, they shall immediately suspend or revoke his license.” The act of June 10, 1918, which repeals Sec. 4452, Revised Statutes, provides that, “Whenever any person directly interested in or affected by any decision or action of any board of local inspectors of vessels shall feel aggrieved by such decision or action, he may appeal therefrom to the supervising inspector of the district; and a like appeal shall be allowed from any decision or action of a supervising inspector to the Supervising Inspector General whose decision when approved by the Secretary of Commerce, shall be final: Provided, however, That application for such re-examination of the case by a supervising inspector *of* by the Supervising Inspector General shall be made within thirty days after the decision or action appealed from shall have been rendered or taken; And provided further, That in all cases reviewed under the provisions of this Act where the

issue is the suspension or revocation of the license of a licensed officer such officer shall be allowed to be represented by counsel and to testify in his own behalf." Section 2 of that same act provides "That whenever there shall be a disagreement between the local inspectors in regard to any matter before them for decision they shall report the case to the supervising inspector of the district, who shall investigate and decide the same. Any supervising inspector may within thirty days thereafter, upon his own motion, review any decision or action of any board of local inspectors within his district and in like manner the Supervising Inspector General may within thirty days thereafter review any decision or action of any supervising inspector or board of local inspectors, and the decision of the Supervising Inspector General in such case shall, when approved by the Secretary of Commerce, be final." Sec. 3, "That any decision or action reviewed by the Supervising Inspector General or by any supervising inspector, as provided in sections one and two of this Act, may be revoked, changed, or modified by such reviewing officer, who shall have power to administer oaths and to summon and compel the attendance of witnesses by a similar process as in the district courts of the United States; and the disbursing clerk, etc." Sec. 4, "That the Secretary of Commerce shall make such regulations as may be necessary to secure a proper enforcement of the provisions of this Act." At this time I desire to call the supervising inspector's attention to this provision, the only statutory provision to be found in

the Statutes of the United States, regarding the hearing of charges against a licensed officer. The power of supervision is given to the Supervising Inspector by Sec. 4407, with the right, if the investigation shows that there has been inattention, neglect or failure to perform his duties by a licensed officer, to file said charges with the local board of Inspectors for hearing. Sec. 4450, provides "That the Local Board of Inspectors shall hear all (the word all being used in the Statute) charges for all acts of incompetency or misconduct committed by any licensed officer." The act of June 10, 1918, has 3 provisions; the first provision is—giving any person directly interested in or affected by any decision of the board of local inspectors the right to appeal therefrom to the supervising inspector, and the like right to appeal from the supervising Inspector to the Supervising Inspector General. It provides that this appeal must be taken within 30 days from the date of the decision; the second provision therein is that when a local board disagrees the matter is then referred to the supervising inspector for the district, with the proviso that he shall investigate the same. It also provides that any supervising inspector within 30 days thereafter, "meaning 30 days" after the disagreement and 30 days after the matter has been referred to him by the local inspectors, may upon his own motion review this decision of the local inspectors, that also provides that it must be done within 30 days. Sec. 3 gives such reviewing officer the power to administer oaths, etc. Sec. 4, "That the Secretary

of Commerce shall make such regulations as may be necessary to secure a proper enforcement of the provisions of this Act." Sec. 4405 of the Revised Statutes provides, "The Supervising Inspectors and the Supervising Inspector General shall assemble as a board once in each year at the city of Washington, D. C., on the third Wednesday in January and at such other times as the Secretary of Commerce shall prescribe, for joint consultation, and, among other provisos that the Board is to establish all necessary regulations required to carry out in the most effective manner the provisions of this title, and also regulations, prohibiting useless and unnecessary, etc." And then the provision is that "The Secretary of Commerce may at any time call in session, after reasonable public notice, a meeting of an executive committee, to be composed of the Supervising Inspector General and any two Supervising Inspectors, which committee with the approval of the said Secretary, shall have power to alter, amend, add to, or repeal any of the rules and regulations made, with the approval of the Secretary of Commerce, by the board of supervising inspectors, either by virtue of this section or under any power granted by this title, or any amendments thereof, such alteration, amendment, addition, or repeal, when approved by the said Secretary, to have the force of law and to continue in effect until thirty days after the adjournment of the next meeting of the Board of Supervising Inspectors." The bulletin of the Department of Commerce, Steamboat Inspection

Service, General Rules and Regulations, prescribed by the Board of Supervising Inspectors, as amended at Board meeting of January, 1920 (Edition May 14, 1920, which is approved by an Act on May 14, 1920), by J. W. Alexander, Secretary of Commerce, provides on Page 183, rules of practice for the government of Supervising and Local Inspectors of steam vessels in trials of licensed officers of vessels. It is divided into two sections. The first section is the suspension and revocation of licenses. It deals with charges by the Local Inspectors, testimony and findings. Nowhere in the first subdivision, or the first 10 paragraphs of Chapter 1 of the said Rules of practice, is the Supervising Inspector given any power. Chapter 2, of said Rules of Practice, or that part entitled Appeal to Supervising Inspectors, containing 4 paragraphs, gives to the Supervising Inspector upon notice of appeal from the decision of the Local Board, providing said notice of appeal shall have been made within 30 days of the date of decision of the Local Board, shall give notice in writing to said Local Board to forward a certified copy of their decision together with the charges and all evidence in writing on file in their office. Sec. 2 provides that "The Supervising Inspector shall then proceed to investigate the case under the same rules prescribed for the trial of the accused by the local Board. Sec. 3 provided, "The testimony taken before the Local Board may be considered by the Supervising Inspector for the purpose of determining whether the finding of the Local Board

is justified by the evidence, and he shall have power to remand the same for explanation or correction." These are the rules governing Supervising Inspectors as laid down by the Revised Statutes. And the General Rules and Regulations of the Department of Commerce are approved by the Secretary of Commerce and issued by the Department of Commerce. The facts in the case of Capt. Alwen are these: The collision between the "West Hartland" and the "Governor" occurred on the morning of April 1st. On April 1st, at 1:30 P. M. he was summoned to appear before the Board of Local Inspectors for investigation as to the cause of this collision. He appeared and was in attendance upon said inspectors until the hearing was finished: that on April 16th the local board of steamboat inspectors handed down their decision in which they find, among other things, that "when the master of the 'West Hartland,' Captain John Alwen, who had personal charge of the navigation of the vessel at the time, first saw the approaching lights of the 'Governor' he realized that the vessels were developing a crossing situation. He watched the approaching lights anxiously but abided by the provisions of the crossing rule. Crossing Rule VII quoted. When two steamers are meeting at right angles or obliquely, viz.: the vessel having another on her starboard side must give way to the other, the latter to hold her own course and speed. This makes the latter vessel a privileged vessel under the law, as the vessel having the right of way must keep her course and speed, and the other

vessel may assume that she will do so. This renders it obligatory on the vessel which has the right of way to pursue her course at the speed she had been keeping up previously. She must rely on the other vessel to avoid collision, and not embarrass her by any maneuver. All she need do is do nothing. Then the other vessel knows what to expect and navigates accordingly. This rule applies to all the other steering and sailing rules. Under it, when a sail vessel is running free keeps out of the way, the close hauled vessel keeps her course. Between two crossing steamers, when the one on the left keeps out of the way the other keeps her course. Between a steamer and a sail vessel, when the steamer keeps out of the way, the sail vessel keeps her course. The principle is the same in all these different contingencies. See 155, U. S. 252, 15 Sup. Ct. 99, 39 L. Ed. 139. This rule the 'West Hartland' was endeavoring to follow until the master saw that a collision was imminent when he reversed his engines to full speed astern in an effort to lessen the force of the impact that must follow, a privilege granted him under Rule XI of the inland pilot rules, which reads as follows: 'In obeying and construing these rules due regard shall be had to all dangers of navigation and collision and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.' The expression 'if necessary' does not mean essential but prudent or expedient to the mind of a mariner of skill. As Capt. John Alwen, master of the S. S. 'West Hart-

land' acted in accordance with these principles, he is absolved from all blame." The record in this case in the office of the Board of Local Inspectors, does not show that any appeal was ever taken from this decision. The language of this decision shows that the very same matters were considered by the Board of Local Inspectors as the Supervising Inspector is attempting now to hear here, as will be seen from comparison of the language of the decision of the Local Inspectors and the charges as served upon Capt. Alwen by the Supervising Inspector of the 11th District. (Reads charge.)

DEPARTMENT OF COMMERCE.

Steamboat Inspection Service.

In reply refer to
File No. 788/1.

Office of Supervising Inspector, 11th Dist.
Seattle, Wash.

May 16, 1921.

Captain John Alwen,
2023 Boylston Ave. North.,
Seattle, Washington.

Sir: You are hereby charged with violation of the U. S. Revised Statutes, Sections 4439 and 4050, with negligence, unskillfulness and inattention to your duties as Master of the steamship WEST HARTLAND on the night of March 31, 1921, and the morning of April 1, 1921, in this, that being in doubt as to the course and intention of the steamship GOVERNOR as that vessel and the WEST HARTLAND were approaching each other, you

failed to signify your lack of understanding, which resulted in the collision between the WEST HARTLAND and the GOVERNOR; and further, in this, that having signaled the GOVERNOR of your intention to hold your course and speed you failed to do so but without informing the GOVERNOR thereof you stopped and reversed engines, which resulted in the collision between the WEST HARTLAND and the GOVERNOR; and further, in this, that when the collision was imminent you did not take proper measures to avoid the collision which resulted in the collision between the WEST HARTLAND and the GOVERNOR.

At your earliest convenience you are directed to appear at this office to make answer to these charges. You may be represented by counsel if you so desire.

Respectfully,

(Signed) WILLIAM FISHER,

Supervising Inspector, Eleventh District.

W.

Mr. REAGAN.—In the decision of the Local Inspectors they find that the captain of the “West Hartland” when he first saw the approaching lights of the “Governor” realized that they were in a crossing situation. The first charge in this, is “being in doubt as to the course and intention of the steamer GOVERNOR as that vessel and the WEST HARTLAND were approaching each other, you failed to signify your lack of understanding.” The Local Inspectors find that under Rule VII, in such a situation it was his duty, in the language

of the Local Inspectors "to do nothing." The second charge here is "that having signaled the 'Governor' your intention to hold your course and speed you failed to do so, but without informing the 'Governor' you stopped and reversed engines." The Local Inspectors had this matter before them as shown by the decision which reads (referring to her being a privileged vessel she was entitled to keep her course and speed) "This rule the 'West Hartland' was endeavoring to follow until the master saw that a collision was imminent when he reversed his engines to full speed astern, in an effort to lessen the force of the impact that must follow, a privilege granted him under Rule XI of the inland pilot rules." The third charge as laid here is "that when the collision was imminent you did not take proper measures to avoid the collision which resulted in the collision between the 'West Hartland' and the 'Governor.' The Local Inspectors in their decision, after quoting Rule XI, pilot rules, say "the expression 'if necessary' as used there does not mean essential, but prudent or expedient, to the mind of a mariner of skill. As Capt. John Alwen, master of the S. S. 'West Hartland' acted in accordance with these principles, he is absolved from all blame." So I say to you that comparison of the language of the decision of the Board of Local Inspectors and the charges as handed to Captain Alwen in this case, shows that the Board of Local Inspectors had the identical questions before them and passed upon them. That the only provision made under

such circumstances is an appeal to you. That there has been no appeal taken either by any person interested, or by you as Supervising Inspector in your official capacity. So I have no hesitancy in saying to you that these charges and this hearing is being held without authority or warrant of law. This provision under the Regulations, provides (and it is the only regulation that I have been able to find), that the Supervising Inspector shall give notice in writing to said Local Inspectors to forward a certified copy of their decision together with the charges and all evidence in writing on file in their office. The records so far show, as far as we know, that this provision of the Regulations was never complied with, which under Sec. 4405 of the Revised Statutes, has the same force and effect as the Statutes. I want to assure the Supervising Inspector that this motion is not made for any other purpose than protecting the license of Capt. Alwen as his right to a livelihood. These statements are not in the nature of an appeal, but the only rights given anyone are those contained in the Statutes, and unless that right is found in the Statutes then the Secretary of Commerce down to the Local Inspectors has no right to act in this case. In this connection I might say that I desire to call the Supervising Inspector's attention to the case of *Bulger vs. Benson* decision in 262 Federal Reporter 929, which was a case in which the Board of Local Inspectors attempted to read in the Statutes something that was not there. The Supervising Inspector took the same stand.

The case was tried in the District Court and was decided in favor of the licensed officer; that the Inspectors' only authority to act is in the Statutes and that they were wrong, and an injunction was granted against them taking away his license. This case was appealed by the Inspectors and affirmed by the Circuit Court of Appeals of this District. I can see no distinction between the 2 cases. For the reason I would like to have a decision upon this motion before proceeding further.

SUPERVISING INSPECTOR.—Mr. Reagan, I will ask you if the question involved in the motion for dismissal is on the point of lack of authority of this office to conduct this trial?

Mr. REAGAN.—Absolutely, no authority, no provision in the Statutes, boiling it down, no statutory provision gives to you as Supervising Inspector the right in the manner you are doing it, to summon witnesses in this case.

SUPERVISING INSPECTOR.—In answer to the motion for dismissal I will say that the question of authority of this office to file charges against Captain Alwen in this case, and proceed to trial, has been passed upon by the Bureau, Steamboat Inspection Service, and the Bureau did rule that this office has authority to file charges against Capt. Alwen, and by reason of that decision from the Bureau the proposal to dismiss the trial is denied. This office is willing to hear any testimony that the defense has to offer.

Mr. REAGAN.—I further desire to call your attention to the fact that the charges as laid by the Supervising Inspector in the instant case allege the violation of Section 4450, which specifically states that “The Local Board of Inspectors shall investigate all acts of incompetency of misconduct on the part of any licensed officer.” The acts of misconduct and incompetency as alleged in these charges are shown by the record in the office of the Supervising Inspector have never been considered by the Local Board of Inspectors. In hearing held upon which decision was rendered April 16, 1921, no appeal was taken by an interested party or party affected by said decision, or was any order or motion made by the Supervising Inspector within 30 days of said hearing to review that decision, and as far as Captain Alwen, the master of the “West Hartland” has been advised, no action of any kind was taken by the Supervising Inspector in regard to the decision as filed by the Board of Local Inspectors.

SUPERVISING INSPECTOR.—I will say that no charges were filed against Capt. Alwen by the Local Inspectors. The Local Inspectors merely held an investigation of the collision, and this office filed charges against Capt. Alwen within 30 days of the date of the decision of the Local Inspectors as a result of the investigation of the collision.

Mr. REAGAN.—Did you report any facts you found in writing to the Local Board?

SUPERVISING INSPECTOR.—I don't think, Mr. Reagan, that I am called upon to answer the cross-examination.

Mr. REAGAN.—In view of the answer to this motion of Captain Fisher, the Supervising Inspector, and his statement that no charges were filed by the Board of Local Inspectors, I desire to call attention to Sec. 4407, which provides that "Whenever a Supervising Inspector ascertains to his satisfaction that any master, mate, engineer, pilot, or owner of any steam vessel fails to perform his duties according to the provisions of this Title, he shall report the facts in writing to the board of local inspectors in the district where the vessel was inspected or belongs and, if need be, he shall cause the negligent or offending party to be prosecuted; and if the supervising inspector has good reason to believe there has been, through negligence or any other cause, a failure of the board which inspected the vessel to do its duty, he shall report the facts in writing to the Secretary of Commerce, who shall cause immediate investigation in to the truth of the complaint, and, if he deems the cause sufficient, shall remove any officer found delinquent." *Ut* appears from the statement of the Supervising Inspector that at no time did he report in writing to the Board of Local Inspectors of this District any failure on the part of Captain Alwen to perform his duties, and further appearing that he has not reported the facts in writing to the Secretary of Commerce that the Local Board of Inspectors has failed in their duty,

and it further appearing that the Supervising Inspector of this District has failed, by his own statement just made, to present his alleged neglect of duty of Capt. Alwen before the Board of Local Inspectors, that from his statement alone it is plain—that the Statutory requirements of the Congress of the United States have in no way been carried out or even attempted to be carried out, and therefore this hearing is being held without authority.

SUPERVISING INSPECTOR.—In reply I will state that Sec. 4407 Revised Statutes, deals more particularly with the inspection of vessels. I will add that on conclusion of this trial I will be in a position to act in conformity with the Statutes.

Mr. REAGAN.—I will state that that is the only section that gives the Supervising Inspector any authority in regard to inattention to duty of a licensed officer, specifically to “inattention,” in the language of the Statute “failure to perform duty,” according to the provision of this Title then the Supervising Inspector shall report the facts in writing to the Board of Local Inspectors, which was never done. My objection is that the statute, the entire statute, under the laws governing the Steamboat Inspection Service, states that the duty of initiating charges is placed solely and alone with the Local Board of Inspectors, and that it is his duty to file charges, as it comes to the knowledge of the Supervising Inspector that a licensed officer is guilty of neglect of duty, to file the same with the Local Inspectors.

SUPERVISING INSPECTOR.—I will say that the matter of authority of this office in this proceeding has been passed upon and I am ready to resume this case and listen to any testimony the defense wants to present.

[Endorsed]: Case No. 276-E. Defts. Exhibit "B." United States District Court, Western District of Washington. John Alwen vs. William Fisher etc. Filed Jan. 10, 1922. ———, Clerk.

No. 3975. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 25, 1923. F. D. Monckton, Clerk.

Defendants' Exhibit "C."

Hearing resumed June 24, 1921. (Reported by M. H. THOMAS.)

(Statement by the Supervising Inspector.)

In further reference to the objection which was interposed to my instituting these proceedings, I desire to state at this time that the Board of Local Inspectors held an investigation of the collision between the steamships GOVERNOR and WEST HARTLAND, at the conclusion of which, on April 16, 1921, they rendered a decision exonerating Captain John Alwen of the WEST HARTLAND. Pursuant to the Act of 1918, I carefully reviewed their proceedings and concluded that the facts brought out did not warrant the conclusion which they reached as to Captain Alwen, and re-

quired further investigation on my part, consequently, on May 16, 1921, in accordance with my duties as Supervising Inspector, I preferred charges and under these charges have conducted this hearing as a part of my review of the case. Under section 3 of the Act of 1918, I have the authority as a reviewing officer to summon witnesses and hear their testimony the same as in an original proceeding.

Mr. REAGAN.—I would like to state that in renewing the objection, in view of the statement of the Supervising Inspector, that nowhere in the Statutes or laws of the United States, or Regulations of the Department of Commerce, Steamboat Inspection Service, is there found any authority on the part of the Supervising Inspector to file charges in an original proceeding such as has been done in this case. That that duty, under section 4450 of the Revised Statutes displays solely and entirely in the hands of the Local Board of Steamboat Inspectors. Under section 4407 the Supervising Inspector is given authority to report any facts of failure to perform the duties of a licensed officer to the Board of Local Inspectors for investigation, which was not done in this case. Under the Acts of June 10, 1918, nowhere provides that the Supervising Inspector can and none of the provisions authorizes him to file original charges against a licensed officer such as was done in this case. It simply provides that he has the authority to review and can revoke charge or modify, and that he has the power to administer oaths held

in the attendance of witnesses in the review that he has stated—today is the result of the original investigation introduced by the Local Inspectors out of which no charges arose. That under this section it was his duty if he found that the Local Inspectors were wrong to remand the case back to them for rehearing. Also the rules of practice for the government of the Supervising Inspectors and Local Inspectors for Steam Vessels, in trial of licensed officers of vessels, which was issued May 14, 1920, by the Department of Commerce under the authority of J. W. Alexander, Secretary of Commerce, which is nearly two years after the Act of June 10, 1918, does not provide for the filing of original charges by the Supervising Inspector, but places that duty entirely, as does the Statutes, in the Local Board of Inspectors. It does give the right of the Supervising Inspector to hear an appeal upon notice provided said notice of appeal shall be made within thirty days from the date of the Local Board, and shall give notice in writing to said Local Board to forward certified copy of their decision together with the charges and all evidence and writing on file in their office. That there is no evidence that any notice of appeal was ever given in by anyone. There is no evidence by the Local Inspectors ever notified for for a certified copy of their decision together with the charges and all evidence and writing in file in their office. This section 3 of the Rules of practice as promulgated by the department of Commerce provides that testimony taken before the Local Board may

be considered by the Supervising Inspector for the purpose of determining whether the findings of the Local Board is justified by the evidence, and he shall have the power to remand the same for explanation and correction. That under this statement just made by the Supervising Inspector, he examined that evidence on his own motion and it did not warrant the conclusion of the Local Inspectors. He did not remand it to the Board of Local Inspectors for either an explanation or correction, that his charges as filed upon Captain Alwen are being held without authority of law, and this statement is made by his counsel for the purpose of answering the Supervising Inspector's statement just read in to the record.

[Endorsed]: Case No. 276-E. Defts. Exhibit "C." United States District Court, Western Dist. of Washington. John Alwen vs. William Fisher, etc. Filed Jan. 10, 1922. ———, Clerk.

No. 3975. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 25, 1923. F. D. Monckton, Clerk.

Defendants' Exhibit "D."

SIXTY-SEVENTH CONGRESS

William S. Greene, Chairman	Arthur M. Free
George W. Edmonds	William H. Kirkpatrick
Frank D. Scott	Ogden L. Mills
Wallace H. White, Jr.	Rufus Hardy
Frederick R. Lehlbach	Ladislav Lazaro
Edwin D. Ricketts	William B. Bankhead
Carl R. Chindblom	Ewin L. Davis
Albert W. Jefferis	Thomas H. Cullen
Nathan D. Perlman	Schuyler O. Bland
Benjamin L. Rosenbloom	Clay Stone Briggs
Harry C. Gahn	René G. De Tonnancour, Clerk

HOUSE OF REPRESENTATIVES U. S.

Committee on

The Merchant Marine and Fisheries

Washington, D. C.

September 22, 1921.

Personally appeared before me on this 22d day of September, in the year 1921, Mr. Rene G. de Tonnancour, with whom I am acquainted and whom I hereby certify to be the Clerk of the Committee on the Merchant Marine and Fisheries, House of Representatives, in Washington, D. C.

I also certify that said Rene G. de Tonnancour affixed his signature under the certification which was written by his own hand in writing on the copy of Report No. 495 hereto attached.

Signed by me on this twenty-second day of September, in the year of our Lord Nineteen Hundred and Twenty-one.

[Seal]

HOWARD F. BRESEE,
Notary Public.

[Endorsed]: Case #276-E. Defendants' Identification "D."

No. 3975. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 25, 1923. F. D. Monckton, Clerk.

Sept. 22, 1921.

I hereby certify that this Report No. 495 is a true copy of the original submitted to the House of Representatives in Washington, D. C., by the Committee on the Merchant Marine & Fisheries on April 5, 1916, during the 1st session of the 64th Congress.

RENE G. de TONNANCOUR,
Clerk to the Committee on the Merchant Marine
and Fisheries.

HOUSE OF REPRESENTATIVES.

64th CONGRESS,
1st Session.

REPORT
No. 495.

APPEALS FROM DECISIONS OF BOARDS OF LOCAL INSPECTORS OF VESSELS.

April 5, 1916.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. SAUNDERS, from the Committee on the Merchant Marine and Fisheries, submitted the following:

REPORT.

[To accompany H. R. 13223.]

The committee on the Merchant Marine and Fisheries, to whom was submitted the following bill:

A BILL To provide for appeals from Decisions of boards of local inspectors of vessels, and for other purposes.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That whenever any person directly interested in or affected by any decision or action of any board of local inspectors of vessels shall feel aggrieved by such decision or action, he may appeal therefrom to the supervising inspector of the district; and a like appeal shall be allowed from any decision or action of a supervising inspector of the Supervising Inspector General, whose decision, when approved by the Secretary of Commerce, shall be final: Provided, however, That application for such re-examination of the case by a supervising inspector or by the Supervising Inspector General shall be made within thirty days after the decision, or action appealed from shall have been rendered or taken: And provided further, That in all cases reviewed under the provisions of this act where the issue is the suspension or revocation of the license of a licensed officer such officer shall be allowed to be represented by counsel and to testify in his own behalf.

Sec. 2. That whenever there shall be a disagreement between the local inspectors in regard to any matter before them for decision they shall report the case to the supervising inspector of the district, who shall investigate and decide the same; and any supervising inspector may within thirty days there-

after, upon his own motion, review any decision or action of any board of local inspectors within his district; and in like manner the Supervising Inspector General may within thirty days thereafter review any decision or action of any supervising inspector or board of local inspectors, and the decision of the Supervising Inspector General in such case shall, when approved by the Secretary of Commerce, be final.

Sec. 3. That any decision or action reviewed by the Supervising Inspector General, or by any supervising inspector, as provided in sections one and two of this act, may be revoked, changed, or modified by such reviewing officer, who shall have power to administer oaths, and to summon and compel the attendance of witnesses by a similar process as in the district courts of the United States; and the disbursing clerk, Department of Commerce, shall pay, on properly certified vouchers, such fees to any witness so summoned, for his actual travel and attendance, as shall be officially certified to by the officer reviewing the case, not exceeding the rate allowed for fees to witnesses for travel and attendance in the district courts of the United States.

Sec. 4. That the Secretary of Commerce shall make such regulations as may be necessary to secure a proper enforcement of the provisions of this act.

Sec. 5. That section forty-four hundred and fifty-two of the Revised Statutes, as amended by

section six of the act of March third, nineteen hundred and five, is hereby repealed—

respectfully reports the same back to the House without amendment, with the recommendation that it do pass.

The reasons for the enactment of this measure may be found in certain facts ascertained in the investigation of the Eastland disaster at Chicago on July, 1915.

It developed in the course of that investigation that the action of the local inspectors was final under existing law, with relation to various situations vitally affecting the public interests. In connection with this investigation the Secretary of Commerce secured the aid of several prominent men in Chicago who acted as an advisory committee. At the conclusion of the hearing these gentlemen made a number of recommendations. One of these recommendations was to the effect that in all cases where the power of decision of the local inspectors was final under existing law, an appeal shall be provided for all the parties directly concerned. The primary purpose of this bill is to afford this appeal, the course of the same being from the local inspectors to the supervising inspector, and from the supervising inspector to the supervising inspector general. The provisions of this bill would allow an appeal to an officer convicted by the local inspectors of dereliction of duty, and in case of acquittal a like appeal is provided for the department.

Again, the local board of inspectors might make an entry in a certificate of inspection allowing the use of a less number of officers than the considerations of safe navigation for the vessel inspected would suggest as necessary and proper. Under these circumstances the owners of the vessel from motives of selfish personal interest might not take an appeal, but would be willing to abide by the action of the inspectors. This bill provides in such a case not only for a review on his motion by the supervising inspector of any action of the local inspectors, but affords in addition an appeal from the decision of the local board, to any person directly interested in, or affected by its decision. The reasons for the passage of this measure, are both obvious and impelling. Appended will be found the letter of the Secretary of Commerce to the chairman of this committee, with the accompanying documents.

DEPARTMENT OF COMMERCE,
Office of the Secretary,
Washington.

December 21, 1915.

My Dear Judge Alexander: I shall be glad if you will attach this letter to that which I have heretofore written you respecting H. R. 4783.

The enclosed is one of the regular accident reports made to me by the Steamboat-Inspection Service. Attached to it is a copy of the letter I have sent to the service in the matter. The penalty of 30 days' suspension of license for such violation of regulations as has resulted in this case in the

sinking of the steamer and the loss of two lives is absurdly inadequate. Nothing can be done about it, however, by the department. There is no appeal. I can write the letter of which copy is herein, but if the inspectors see fit they can do the same thing again. The suspension should have been for at least six months. It is wholly wrong that the Government should find its hands tied in matters of this kind, and it is subversive of the discipline which the service exists to preserve.

Yours, very truly,
WILLIAM C. REDFIELD,
Secretary.

Hon. J. W. ALEXANDER,
House of Representatives, Washington, D. C.
DEPARTMENT OF COMMERCE,
Steamboat-Inspection Service,
Washington,

December 8, 1915.

The Secretary of Commerce:

Pursuant to instruction, you will please find below report of accident in which a vessel subject to the inspection of this service was concerned:

Names of vessels: Towing steamers Lackawanna and Triton.

Line or owner: Delaware, Lackawanna & Western Railroad Co., New York, N. Y., and the Independent Pier Co., Philadelphia, Pa., owners, respectively.

Officers in charge of vessel: M. Brophy and Thomas O. Moon, masters, respectively.

Local district in which accident occurred: Boston.

Place of accident: Handkerchief Light Vessel.

Date of accident: August 15, 1915.

Nature and extent of accident: Collision, causing the towing steamer Lackawanna to sink.

Cause of accident: Violation of regulations governing tows of seagoing barges on inland waters.

Number of lives lost: Two.

Vessels were last inspected at Hoboken, N. J., and Philadelphia, Pa., respectively, on September 17, 1915, respectively, by C. Smith and H. McPherson, assistant inspectors of hulls, and W. G. Fenwick and C. A. Mattson, assistant inspectors of boilers.

Action taken: Case investigated and the licenses of the masters of both these vessels were suspended for a period of 30 days.

REMARKS.—The barge Nanticoke in tow of the tug Triton collided with the tugboat Lackawanna, causing the latter to sink soon after. The mate and the cook of the Lackawanna were drowned, and the remainder of the crew of the Lackawanna, 14 men, were rescued in their lifeboat.

This case was investigated by the local inspectors at Boston and charges were preferred against the masters of these vessels. M. Brophy, master of the Lackawanna, was tried and found guilty of violation governing tows of seagoing barges on inland waters and his license was suspended for 30 days. Thomas O. Moon, master of the tug Triton, failed to appear at his trial on the dates he was directed to do so, and upon his failure to appear the board convened for trial and entered a finding of guilty

by default and his license was suspended for 30 days, said suspension to begin on the date of the receipt of his license by the local inspectors.

The matter of the short period of the suspension of these men's licenses was taken up by this office with the local inspectors. The local inspectors advised that in arriving at the term of suspension they did not consider any extenuating circumstances, although certain conditions existed that might be considered extenuating.

GEO. UHLER.

December 21, 1915.

SUPERVISING INSPECTOR GENERAL,
STEAMBOAT-INSPECTION SERVICE:

I am sending to the chairman of the House of Representatives Committee on Merchant Marine and Fisheries accident report 71663 of December 8, respecting the loss of the towing steamer Lackawanna, and with it goes a copy of this letter. I am using this example to urge the enactment of H. R. 4783, which would give the department the right of appeal from such absurd decisions as that in this present case.

Here is a case in which it was admitted that the captain of a towing steamer so acted that a collision ensued causing the loss of the towing steamer Lackawanna with two lives. The penalty is a suspension of license for 30 days. It is hard for me to conceive the condition of mind in which so trifling a penalty is imposed for so serious an offense. The regulations intended to save life and property were broken and loss of life and

property both ensued. What worse offense is there that a marine captain could commit than this? It is not the absence of skill that is charged. It is not in the strictest sense an accident that is charged. It is a violation of regulations causing the death of human beings and the loss of a steamer. I should expect to see in a case of this kind an indefinite suspension of license or certainly one for a period of not less than six months. I deeply regret that the law seems such that charges cannot be brought against the local inspectors who impose this trivial penalty for neglect of duty.

I wish you to impress upon them that I regard them as having been derelict and as deserving of a severe reprimand. I trust in future cases they may show a higher sense of the value of human life and of the purpose for which they sit in judgment on violators who by such violations cause loss of life and property.

WILLIAM C. REDFIELD,
Secretary.

Defendants' Exhibit "E."

DEPARTMENT OF COMMERCE.

Washington.

September 21, 1921.

I hereby certify that the annexed is a true copy of the original decision of the Supervising Inspector General, Steamboat-Inspection Service, Department of Commerce, in the case of the appeal of Captain John Alwen, Master of the steamer

WEST HARTLAND, from the decision of the Supervising Inspector of the Eleventh District, Seattle, Washington, in the matter of the collision between the steamer GOVERNOR and the steamer WEST HARTLAND, on April 1, 1921, made and rendered July 22, 1921, on file in the Office of the Supervising Inspector General, Steamboat-Inspection Service.

D. N. HOOVER,
Acting Supervising Inspector General.
(Official Title.)

OFFICE OF THE SECRETARY.

I hereby certify that D. N. Hoover, who signed the foregoing certificate, is now, and was at the time of signing, Acting Supervising Inspector General, Steamboat-Inspection Service, Department of Commerce, and that full faith and credit should be given his certification as such.

IN WITNESS WHEREOF, I have hereunto subscribed my name, and caused the seal of the Department of Commerce to be affixed this 21st day of September, one thousand nine hundred and twenty-one.

[Seal]

C. H. HUSTON,
Assistant Secretary of Commerce.

(IB)

(Copy)

“Thrive by Thrift, Buy War Savings Stamps.”

In reply refer to

AEK.

File No. 81438.

DEPARTMENT OF COMMERCE,

Steamboat-Inspection Service,

Washington.

August 23, 1921.

F. C. Reagan, Esquire,

Office of United States Attorney,

Department of Justice,

Seattle, Washington.

Sir:

1. The Bureau is in receipt of your letter of the 15th instant, enclosing notice of appeal by Captain John Alwen, Master of the S. S. WEST HARTLAND, from the decision of the Supervising Inspector of the Eleventh District, United States Steamboat-Inspection Service at Seattle, Washington, in the matter of the collision between the S. S. GOVERNOR and the S. S. WEST HARTLAND on April 1, 1921, made and rendered July 22, 1921.

2. It is observed that the notice of appeal is signed by John Alwen, Master, S. S. WEST HARTLAND, and countersigned by yourself as Attorney for Captain John Alwen, Master of S. S. WEST HARTLAND.

3. Receipt is also acknowledged of the brief of Captain John Alwen, signed by you as his attorney, submitted in connection with his appeal from the

decision of the Supervising Inspector of the Eleventh District, United States Steamboat-Inspection Service, Seattle, Washington, made and rendered July 22, 1921.

4. In reply, you are advised that your brief has been very carefully read, thoroughly analyzed, and comprehensively digested. All the evidence adduced at the trial has been considered in all its phases and from every direction, and as to its purpose and effect.

5. In the opinion of the Bureau, your contention that the action of the Supervising Inspector was irregular and not authorized by the law, has no force, as that authority is fully covered by Sections 2 and 3 of the Act of Congress, approved June 10, 1918, and the Supervising Inspector proceeded correctly in his consideration of this case. The method of obtaining evidence in cases of this character, its admission, application and purpose, is not governed by any rules of practice or procedure, and evidence may be secured in any manner that will best tend to elicit the information necessary or desirable in arriving at an intelligent and consistent conclusion and decision. The inuendo contained in your brief directed against the integrity and the impartiality of the Supervising Inspector deserves no consideration at my hand, and will be passed over without comment, as I believe, that he has been eminently fair and impartial in his consideration of this important case, and that there has been no desire on his part to determine any other than a just and consistent conclusion.

6. The previous experience of the Supervising Inspector eminently fits him to determine responsibility for accident or casualty, and his judgment and discretion in such matters should have the most considerate attention. It is quite unnecessary to undertake to answer in detail the various contentions of your brief, many of the contentions being reiterations of protest which add no strength to previous statements upon the same points, but it will suffice to say that I believe that the action of the Supervising Inspector was legal and perfectly regular, his conduct of the case was in accordance with intelligent and impartial procedure, and his conclusion and decision in accordance with the evidence adduced at the trial of Captain Alwen, and fully supported by the incidents attending the collision of the S. S. WEST HARTLAND and the S. S. GOVERNOR on the night of April 1, 1921.

7. The decision of the Supervising Inspector of the Eleventh District, United States Steamboat-Inspection Service, Seattle, Washington, suspending the license of Captain John Alwen for two years from July 22, 1921, is affirmed and the appeal respectfully dismissed.

Respectfully,

(Signed) GEO. UHLER.

Supervising Inspector General.

DNH.

Approved:

(Signed) C. H. HUSTON.

Assistant Secretary of Commerce.

August 24, 1921.

[Endorsed]: Case No. 276-E. Defts. Exhibit "E." United States District Court, Western Dist. of Washington. John Alwen vs. William Fisher, etc. Filed Jan. 10, 1922. ———, Clerk.

No. 3975. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jan. 25, 1923. F. D. Monckton, Clerk.